

Purchasing Manual



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Part 1 – General

SECTION 1 - PURPOSE

The County maintains a central procurement system which promotes efficiency, economy, and fair and open competition in an effort to reduce the appearance and opportunity for favoritism or impropriety, and to inspire public confidence that all purchases and contracts are awarded equitably and economically. The purpose and objectives of this Purchasing Manual (the “Manual”) are:

1. To deal fairly and equitably with all suppliers wishing to do business with Okaloosa County.
2. To assure adherence to all purchasing laws, regulations, and procedures.
3. To maximize competition for all procurements.
4. To administer the contracting function with internal efficiency.
5. To purchase goods and services at the lowest price, consistent with quality, performance, and delivery requirements from capable suppliers meeting the County’s needs.

This Manual is to serve as a permanent, up-to-date guide to County procurement policies and procedures.

SECTION 2 – DISTRIBUTION & REVISIONS

This Manual will be made available electronically to all County employees. The OMB Department shall be responsible for maintaining the official adopted version of this Manual electronically and for the continual updating of this Manual as necessary, including any subsequent revisions as necessary.

All revisions to this Manual must be reviewed by the OMB Director, County Administrator or designee, County Attorney and approved by the Board of County Commissioners (the “Board”).

SECTION 3 - APPLICATION OF MANUAL AND EXEMPTIONS

3.1 Applicability

This Manual, and the policies and procedures contained herein, govern all departments and divisions under the jurisdiction of the Board, as well as all purchasing transactions, which are paid for directly from County and grant funds under the control of the Board. The contents of this Manual preempt all previously existing purchasing manuals, policies and procedures.

3.2 Exemptions from the Purchasing Manual

The following types of purchasing activities shall be exempt from the competitive procurement requirements of this Manual as described below. These exemptions do not preclude the County from utilizing competitive procurement practices where possible.

1. Service/Maintenance Contracts; Continuing service and/or maintenance contracts which are a part of product acquisition/installation to a vendor who is the manufacturer, developer,

or who is the authorized service agent thereof are exempt from further competitive requirements of this Manual. Examples: building systems maintenance, security systems, etc.

2. Real property, options of title or abstracts of title for real property, title insurance for real property, and other related costs of acquisition, rental, or sale of real property.
3. Library Media and Materials. The purchase of library books, education and/or textbooks, printed instructional materials, reference books, periodicals, databases, indexes, pre-recorded library media materials, (e.g. audio and video cassettes, film strips, films, sound recordings, etc.) and printed library cards that are to be a part of the library collection are exempt.
4. Publication of notices and legally required advertisements.
5. Training Media and Services. When such materials or services are available only from the producer, publisher, owner of the copyright or patent, educational institution or training service provider, which developed the training program, the purchase is exempt from competitive requirements.
6. Software. Upgrades, software modification services by the copyright holder, maintenance agreements, and related software enhancements to installed software purchased through competitive means are exempt. The purchase of new software packages or systems shall follow the thresholds and procedures of the Manual to ensure competitive selection.
7. Training and educational courses, lectures by individuals and education events or programs, contracts between the County and governmental entities or nonprofit corporations, memberships, training/trades publications, meeting rooms, and hotels when below the formal bid threshold.
8. Services of legal counsel authorized by the Office of the County Attorney, including, but not limited to, expert witnesses, conflict counsel, and other services required by the Office of the County Attorney as may be authorized in the County Attorney's contract.
9. Food, to include water and beverages, may be purchased with an explanation of the public purpose.
10. Lobby services.

SECTION 4 – IMPLEMENTATION

4.1 Delegation for Implementation

A. It shall be the responsibility of the County Administrator or designee, through the OMB Department, headed by the OMB Director, to implement and enforce the policies and procedures set forth in this Manual.

B. The OMB Director, as head of the OMB Department, shall exercise functional authority over the County procurement process for the purpose of implementing and enforcing these policies and procedures on a County wide basis, as well as in the OMB Department for its role in the process.

C. Each department and division director shall be responsible for implementing and enforcing these policies and procedures within their respective jurisdictions.

4.2 Violations of the Purchasing Manual

A violation of any of the policies and procedures in this Manual may be grounds for disciplinary action and may result in the County's refusal to pay for any improperly ordered goods or services.

4.3 Waiver of the Purchasing Policies and Procedures

The Board shall have the authority to waive the policies and procedures contained in this Manual when deemed to be in the best interest of the County.

SECTION 5 – TRAINING

All County employees who are responsible for implementing the procurement process within their department/division must attend mandatory training classes provided by the Purchasing Division on an annual basis. Purchasing Division will provide the training and maintain records related thereto. New employees must attend mandatory training classes. Consultants and other County contractors when applicable must attend mandatory training classes.

SECTION 6 – SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.

The principals of law and equity, including laws relative to contracts, agency, business entities, ethics, fraud, misrepresentation, duress, coercion, mistake or bankruptcy shall supplement the provisions of this Manual. All contracts awarded by virtue of this Manual, and all procurements of the County pursuant to this Manual, shall be governed by and construed under the laws of the State of Florida and the local laws of Okaloosa County, Florida, unless otherwise provided.

SECTION 7 - CODE OF ETHICS

7.1 Ethics General

Okaloosa County is committed to a purchasing process which fosters fair and open competition, is conducted under the highest ethical standards, and enjoys the complete confidence of the public. To achieve these purposes, the County subscribes to the following code of ethics:

- A. The County will avoid unfair practices by granting all competitive respondents equal consideration as required by State, Federal, and County regulations.
- B. The County will conduct business in good faith; demanding honesty and ethical practices from all participants in the purchasing process.
- C. The County will promote positive respondent and contractor relationships by affording respondent representatives courteous, fair, and ethical treatment.
- D. The County will make every reasonable effort to negotiate equitable and mutually agreeable settlements of dispute or disagreement with a respondent.
- E. The County will avoid involvement in any transactions or activities that could be considered to be a conflict between personal interest and the interest of the County.

7.2 Employee Ethics

Employees are subject to the Human Resources Policy - Code of Conduct and Florida Statute Section 112.313 as may be revised and amended from time-to-time. All employees, regardless of position, will maintain high standards of ethics and conduct and will avoid the appearance of unethical or compromising practices in relationships, actions and communications. Purchasing staff shall maintain complete independence and impartiality in dealings with vendors to preserve the integrity of the competitive process and to ensure public confidence in all procurement activities.

In addition, the provisions of Section 112.313, Florida Statutes, pertaining to the standards of conduct for public officers and employees shall expressly apply to all county officials and employees. A violation of Section 112.313, Florida Statutes, pertaining to purchasing or contractual relationships shall also be deemed a violation of this Manual. Violations of these provisions of ethics and standards of conduct will be subject to disciplinary action up to and including termination of employment.

SECTION 8 – DEFINITIONS

The following terms defined in this section shall have the meanings set forth below whenever they appear in this Manual:

1. **ADVERTISEMENT** – is a public announcement inviting responses for services to be performed or materials to be furnished.

2. **AGREEMENT** – includes all types of agreements, regardless of what it may be called, that involve the purchase or disposal of supplies, services, materials, equipment, or construction.
3. **AUDIT** - is an official inspection of an individual's or organization's accounts, either by the County or its designee.
4. **AWARD** – is the acceptance, by the County, of the successful bidder, respondent or contractor's proposal.
5. **BEST AND FINAL OFFER**- may be used at the end of a competitive negotiation to obtain the proposer's most favorable terms for price, service or product to be delivered. May be used in the request for proposal and invitation to negotiate process.
6. **BID, PROPOSAL or QUOTATION** – is an offer specifically given to the County in response to an Invitation.
7. **BIDDER** – is any individual, partnership, firm or corporation, acting directly or through a duly authorized representative, sole proprietor, joint venture, or any other legal entity, who submits a bid or proposal for the goods or services contemplated.
8. **BIDDING DOCUMENTS** – is the Advertisement or Invitation to Bid, instruction to bidders, the bid form and the proposed contract documents, including all addenda issued prior to receipt of bids.
9. **BIDDING REQUIREMENTS** – is the Advertisement or Invitation to Bid, instruction to bidders and the bid forms.
10. **BLANKET ORDER** – is a purchase order with a supplier to allow multiple delivery dates over a period of time, often negotiated to take advantage of predetermined pricing. It is normally used when there is a recurring need for expendable goods.
11. **BOARD** – is the Board of County Commissioners of Okaloosa County, Florida. The Board maintains the authority to enter into all agreements on behalf of the County under the County's proper name.
12. **BONDS** – are performance, payment and supply bonds and other instruments of surety.
13. **BRAND NAME OR EQUIVALENT SPECIFICATION** – is a specification limited to one or more items by, for example, manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet the County requirements and which provide for the submission of equivalent products.
14. **BUSINESS** – is any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
15. **CCNA** – is Consultants' Competitive Negotiations Act per section 287.055, Florida Statutes.
16. **CENTRAL REPOSITORY** – is a file system of all fully executed contracts, leases and non-

grant agreements maintained in auditable format.

17. **CERTIFICATES OF COMPLIANCE** – is a written statement by the manufacturer stating the material furnished is in conformance with the work specifications. Also called a certificate of conformity or certificate of conformance.
18. **CHANGE ORDERS** – is a document, which amends the scope of, or corrects errors, omissions, or discrepancies in an agreement or purchase order, which is signed by the Contractor and approved in accordance with authorization levels.
19. **CLERK’S RECORDS OFFICE** – is the section under the Clerk of Court that maintains a repository of all original contracts and grant documents.
20. **COMMODITY** – is a product, goods or materials that the County may contract for or purchase for the use and benefit of the County. A specific item, which is different from the rendering of time and effort by a provider.
21. **COMPETITIVE SEALED BIDDING (Invitation to Bid)** – is a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation to bids must be publicly advertised with the title, date, and hour of the public bid opening designated and specifically define the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation to bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.
22. **CONSTRUCTION** – is the process of building, attaining, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.
23. **CONTRACT** – includes all types of legally enforceable agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction and which describe the terms and obligations of the business transaction.
24. **CONTRACT AMENDMENT OR MODIFICATION** – is any alteration in specification, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
25. **CONTRACTOR** – is any person under contract with Okaloosa County (not to include employment contracts).
26. **CONTRACT/LEASE CONTROL NUMBER** – is a systemized unique number assigned by Purchasing Staff to each fully executed contract, lease or agreement providing ready reference, status and totality of the agreement.

27. **CONTRACT/LEASE DATABASE** – is a computer automated file affording organized search and retrieval of contracts, agreements, and leases.
28. **CONTRACTUAL SERVICES** – is the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to: evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services.
29. **CONTRACTUAL SERVICES CONTRACT** – is a contract for a contractor’s time and effort rather than the furnishing of specific commodities. Satisfactory completion of services and/or a specified period of time or date complete such contract.
30. **COOPERATIVE PURCHASING** – is a procurement conducted by, or on behalf of, more than one public procurement unit.
31. **COST ANALYSIS** – is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
32. **COUNTY** – is Okaloosa County, Florida. The Board retains the authority to enter into all contracts on behalf of the County within the County’s proper name.
33. **DEPARTMENT MONITOR** – is the department director, manager, or designee, responsible for monitoring compliance with terms and conditions, oversight, and review of contracts within the issuing/managing County Department.
34. **DEFINITE QUANTITY CONTRACT** – is a contract whereby the contractor(s) agree to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery by the contractor and acceptance of the specific quantity by the County completes such contract.
35. **EFFECTIVE DATE OF AGREEMENT** – is the date indicated in the agreement on which it becomes effective.
36. **EMERGENCY PURCHASE** – is a purchase necessitated by a sudden unexpected turn of events (e.g., including but not limited to acts of God, riots, fires, floods, hurricanes, accidents, terrorism, or any circumstances or cause beyond the control of the agency in the normal conduct of its business) where the delay incident to competitive bidding would be detrimental to the interest of the County. It may also be a condition that stops or seriously impairs the necessary function of County government.
37. **EMPLOYEE** – is a full time, part time, or temporary employee, whether elected or non-elected. For the purposes of this Manual, it also includes any non-compensated individual performing services for the County.

38. **ESTABLISHED CATALOG PRICE** – is the price included in a catalog, price list, schedule, or other form that:
- a. Is regularly maintained by a manufacturer or contractor;
 - b. Is either published or otherwise available for inspection by customers; and
 - c. States prices at which sales are currently or were last made to a significant number of any categories of buyers or those buyers constituting the general buying public for the supplies or services involved.
39. **EXPIRED FILES** – are files of agreements where the time period fixed in the contract, lease or agreement has expired. Retention of expired files shall be in accordance with the State of Florida’s retention schedules.
40. **FINAL PAYMENT** – is payment issued upon satisfactory completion and final close-out of agreement or lease.
41. **FISCAL YEAR** – is a twelve (12) month period of time to which the annual operating budget applies and at the end of which a government determines its financial position and the results of its operations. Okaloosa County’s fiscal year is from October 1 through September 30.
42. **F.O.B. or (Free on Board)** – is a term used in conjunction with an identified physical location to determine the responsibility and basis for payment of freight charges, and the point at which title for the shipment passes from seller to buyer.
43. **FULLY EXECUTED AGREEMENT** – is a contract, lease or agreement executed and approved by the appointed representative of both parties, submitted with all required supporting documentation, approved per appropriate threshold signature and signed by an official.
44. **FUND** – is a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and charges therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.
45. **GENERAL FIXED ASSETS** – are fixed assets used in operations accounted for in governmental funds. General fixed assets include all fixed assets not accounted for in proprietary funds.
46. **IMPROVEMENT** – includes buildings, other structures, and other attachments or annexations to land which are intended to remain so attached or annexed, such as sidewalks, trees, drives, tunnels, drains and sewers. Sidewalks, curbing, sewers and highways are sometimes referred to as “betterment” but the term “improvements” is preferred.
47. **INTENT TO AWARD** – is a written notice that states the firm(s) to whom the County intends to award a contract resulting from a solicitation and which establishes the period in which a notice of intent to protest may be timely filed. The Intended Decision is posted on the County website and on the Public Notice board in the Purchasing Division.

48. **INVENTORY OF SUPPLIES** – is an asset account, which reflects the cost of supplies on hand for use in operations.
49. **INVITATION TO BID (Competitive Sealed Bidding)** – is a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation to bids must be publicly advertised with the title, location (physical or electronic), date, and hour of the public bid opening designated and specifically define the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation to bids is used when the County is capable of specifically defining the scope of work for which a contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required.
50. **INVITATION TO NEGOTIATE (ITN)** – is a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for procurement of commodities or contractual services.
51. **INVITATION TO QUOTE (ITQ)** – is a solicitation that calls for pricing information for purposes of competitively selecting and procuring commodities and contractual services.
52. **IRREGULARITY** – is any change or omission in an offer or contract that does not have an adverse effect on the County’s best interest, and does not affect the outcome of the source selection process by giving an offeror an advantage or benefit not enjoyed by any other offeror, and not inconsistent with applicable laws.
53. **ISSUING DEPARTMENT** – is the department for which the procurement documents (ITB, ITN, ITQ, RFP), agreement or lease is to be issued and where the agreement procedures are to be administered.
54. **JOINT VENTURE** – is (1) a combination of contractors performing a specific job in which business enterprises participate and share a percentage of the net profit or loss; or, (2) a joint business association of individual(s)/firm(s) to carry out a single business enterprise for which purpose the individuals/firms combine their property, money, efforts, skills and/or knowledge.
55. **LEASE** – is the written instrument in which the rightful possessor of real or tangible property (Lessor) conveys the right of use and/or to occupancy of property to another (Lessee) in exchange for consideration, usually in the form of rent.
56. **LESSEE** – is one who has a possessory interest in real or personal property under a lease.
57. **LESSOR** – is a person who conveys real or personal property by lease; esp., Landlord.
58. **MACHINERY AND EQUIPMENT** – includes tangible property of a more or less permanent nature, other than land or buildings and improvements thereon. Examples are tools, trucks, cars,

furniture, and furnishings.

59. **MANUFACTURER** – is a person or firm engaged in the process of making, fabricating, constructing, forming or assembling a product(s) from raw, unfinished, semi-finished, finished, or recycled materials through a direct contract/agreement on behalf of the general contractor.
60. **MATERIAL MISTAKE** – is any deviation or variance from the bid requirements or other mistake that gives one bidder a substantial advantage over other bidders. A non-material mistake is any mistake that does not affect the price, give one bidder an advantage or benefit not enjoyed by other bidders and does not adversely affect the interests of the County.
61. **NOTICE OF COMMENCEMENT** – is a notice recorded in accordance with Section 713.13, F.S. prior to the commencing or recommencing to improve any real property.
62. **NOTICE OF AWARD** – is the written notice by the Purchasing Division to notify the successful respondent that the offer they submitted for the advertised work has been accepted, contingent upon written approval by the appropriate County designee as determined by the authorization thresholds.
63. **NOTICE TO PROCEED** – is a written notice given by the Purchasing Division establishing the original date on which the work under the agreement/contract will commence. The Contractor shall begin to perform his/her obligation according to the agreement documents on the dates provided in the Notice to Proceed.
64. **OFFER** – is any bid, proposal or quotation made to the County.
65. **OFFEROR** – is any business submitting an offer to the County.
66. **OMB DIRECTOR** – is the County employee designated as the Director of Office of Management and Budget who is duly authorized to enter into and administer contracts and make written determinations with respect thereto under the terms of this Manual.
67. **OPTION TO RENEW** – is a contract clause that allows a party to reinstate the contract for an additional term.
68. **ORIGINAL** – is the initial, non-reproduced, signed agreements, amendments, change orders and task orders, and any and all other documents that are required to be retained by the Clerk's Records Office.
69. **PAYMENT BOND** – is the approved form of security furnished by the Contractor and their surety as a guaranty that they will pay all bills and accounts for materials and labor used in the work or services. For contracts subject to FTA requirements, payment bonds shall be specified in FTA C4220.1F, IV, 2,i(1)c, as may be revised from time to time.
70. **PERFORMANCE BOND** – is the approved form of security furnished by the Contractor and their surety as a guaranty that the Contractor will complete the work or service in accordance with the terms of the agreement. For contracts subject to FTA requirements, performance bonds

shall be specified in FTA C4220.1F, IV, 2,i(1)c, as may be revised from time to time.

71. **PERSON** – is any business, individual, committee, club, other organization or group of individuals.
72. **PETTY CASH** - an accessible store of money kept by the County for expenditure on small items.
73. **PRE-BID CONFERENCE (or PRE-PROPOSAL CONFERENCE)** – is a meeting held with prospective bidders prior to solicitation of, or the date of receipt of, bids or proposals, to discuss technical aspects, specifications, and standards relative to the subject, and to elicit expertise and bidders interest in pursuing the task.
74. **PROFESSIONAL SERVICES** – may include any services provided by a licensed professional in a particular field or subject. As to Consultants’ Competitive Negotiations Act (CCNA), professional services are defined as those services within the scope of the practice of architecture, professional engineering, landscaping architecture, or registered land surveying, as defined by the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.
75. **PROPERTY** – is any external thing over which the rights of possession, use and enjoyment are exercised.
76. **PURCHASING CARDS (P-CARDS)** – are County-issued credit cards to be used for small purchases of supplies or services within the single purchase limits established in this manual and the limit set by the issuing agency.
77. **PURCHASE ORDER** – is the County’s official document issued separately or in conjunction with other documents such as a contract, which delineates the responsibilities of both parties in provisions of the payment of goods and services required by the County. The Purchase Order is also the mechanism by which budgetary and cash balances are encumbered in the County’s finance system.
78. **PURCHASING** – is buying, procuring, renting, leasing, or otherwise acquiring any materials, supplies, services, construction, or equipment. It also includes all functions that pertain to the obtaining of any material, supplies, services, construction, and equipment, including description of specifications and requirements, selection and solicitation resources, preparation and award of contract.

79. QUOTES

- a. **VERBAL QUOTES** – is the procurement procedure used to purchase commodities or contractual services with a value within the threshold amounts. At least one quote must be obtained for each purchase.
- b. **WRITTEN QUOTES** – is the procurement procedure used to purchase commodities

or contractual services with a value within the threshold amounts. Written Quotes are conducted by obtaining written quotations from three or more vendors. It does not require a public bid opening, and are awarded as per threshold limits and authorizations. In those instances where the securing of three (3) quotations is not practicable, Purchasing Division shall provide written justification of such. Written evidence of all quotations must be maintained.

80. **REAL PROPERTY** – is land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal or incorporeal.
81. **RECYCLED CONTENT** – are materials that have been recycled and are contained in the products or materials to be procured, including, but not limited to, paper, plastic, aluminum, glass and composted materials. The term does not include internally generated scrap that is commonly used in industrial or manufacturing processes or waste or scrap purchased from another manufacturer who manufactures the same or a closely related product.
82. **REGULATION**– is a statement by the County having general or particular applicability and future effect, designed to implement, interpret, or prescribe law, policy or practice.
83. **REQUEST FOR PROPOSALS (RFP)** – is a written solicitation for sealed proposals with the title, date, and hour of public opening designated. The request for proposals is used when the scope of work, specifications, or contractual terms and conditions cannot be well defined. Evaluation of a response is based on prior established criteria which involves more than price. May be a single or multi-step process. May include a provision for the negotiation of a best and final offer. A request for proposal includes, but is not limited to, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria.
84. **REQUEST FOR QUALIFICATIONS (RFQ)** – is a written solicitation for sealed qualifications with the title, date, and hour of public opening designated. The request for qualifications is used where the specifications of required services are broad and specialized in nature. Evaluation of a response is based on prior established criteria which involves more than price.
85. **REQUISITION** – is a written request to have commodities or services purchased.
86. **RESPONSIBLE BIDDER OR OFFEROR**– is having the capability in all respects to perform fully the contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and having the integrity and reliability with a record of timely and acceptable past performance that will assure good faith performance.
87. **RESPONDENT** – is a person who replies to something: one who is supplying information or responding to an advertisement or solicitation/procurement.
88. **RESPONSIVE BIDDER OR OFFEROR**– is an individual, person, contractor, business or institution who has submitted a bid, which conforms in all material respects to the requirements and criteria set forth in the Invitation to Bid, Invitation to Negotiate or the Request for

Proposals.

89. **SERVICES** – is the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than those which are not defined as supplies and which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.
90. **SINGLE SOURCE** – is a commodity or service that can be purchased from multiple sources, but, in order to meet certain functional or performance requirements (e.g., parts matching existing equipment or materials) there is only one economically feasible source for the purchase.
91. **SMALL PURCHASES** – is the procurement of commodities or services with a value within the thresholds set for this category without the requirement of quotes, or bids, from at least three (3) vendors.
92. **SOLE SOURCE** – is a commodity or service that can be legally purchased from only one source. This is usually due to the source owning patents and/or copyrights. A requirement for a particular proprietary item does not justify a sole source purchase, if, there is more than one potential supplier for that item. Use of Brand Names and Model numbers does not constitute a sole source.
93. **SPECIFICATIONS** – is any description of the physical or functional characteristics of the nature of a material, supply, service, construction, or equipment item. It may include a description of any requirement for inspection, testing, recycling or degradable materials content, or preparing a material, supply, service, construction, or equipment item for delivery.
94. **SUBDIVIDING PROCURMENTS** – is the illegal act of submitting two or more purchases to the same vendor within a period of time in order to acquire goods and/or services over the limitations and requirements set forth.
95. **SUCCESSFUL BIDDER** – is the lowest, responsible and responsive bidder to whom the Purchasing Division, based on evaluation, recommends award of the fully executed agreement.
96. **SUPPLIER** – is a person or firm who engages in the selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing, repairing, altering, remodeling, adding to or subtracting from or improving any building, structure or property through a direct contract/agreement on behalf of the general contractor.
97. **SUPPLY BOND** – is a surety guarantee that the supplier will furnish supplies or material as contracted.
98. **SURETY BOND** – is a written promise to pay damages or to indemnify against losses caused by the party or parties named in the document, through nonperformance or through default. For example, a surety bond might be required of an independent contractor. Surety bonds also include Fidelity Bonds covering governmental officials and employees.

99. **SURPLUS PROPERTY** – is any tangible personal property or real property interest owned by the County which has been declared by the County as obsolete or the continued use of which is uneconomical or inefficient or which serves no useful function as to any activity or location under the County’s supervision.
100. **TASK ORDER** –is synonymous with the term “new work” against an existing task-order specific contract approved by the Board of County Commissioners. Selected contractor will be given a scope of work by the managing department. Contractor will prepare and submit a written technical and cost proposal addressing the scope of work. The issuing department will review and negotiate the terms of the task order and forward the task order to the Purchasing Division for authorization. The next consecutive task order # will be assigned and the document will be forwarded for the appropriate level of approval.
101. **TANGIBLE PERSONAL PROPERTY** – is personal property that can be seen, weighed, measured, felt or touched, or is in any way perceptible to the senses, such as furniture. It is not fixed in place and not an integral part of a structure or facility; and is not an integral part or component of another piece of equipment. The Tangible Personal Property Manual is available on the Purchasing Division website.
102. **TIE (IDENTICAL PROCUREMENT)** – is when two or more responses to a procurement are equal with respect to price and it appears the quality and service offered by the vendors are otherwise comparable.
103. **USING AGENCY** – is any department, division, agency, commission board, committee, authority or other unit in the County government using supplies or procuring contractual services as provided for in this Manual.
104. **VENDOR** – (also known as a supplier) is an individual or business that will be or has been awarded a contract by the County.

Part 2 – Procurements

SECTION 9 - REQUISITIONS

9.1 Requisitions General

A. When a department desires to procure a service or good, it must first submit a requisition electronically to the Purchasing Division.

B. For each requisition the requesting department shall:

1. Draft a requisition. The requesting department's director or designee must authorize the requisition. Any designee of a department director must be listed with the Purchasing Division. The Purchasing Division will annually review the list.
2. Only place items of similar nature on the requisition (e.g., hardware, paint, building materials, etc.).
3. The requisition should be precise and define the supply or service requested.
4. Submit in a timely manner to ensure that the Purchasing Division has the opportunity and time to obtain the requested good or service.

9.2 Instructions for Preparing the Requisitions

For more detailed instructions, refer to the Electronic Requisition Procedure.

A. Requisitions shall be forwarded directly to the Purchasing Division's requisition printer electronically.

B. Once received from the requesting department, the Purchasing Division will, in a timely manner, review/process requisitions. In no event shall a requisition be held in excess of five (5) working days without action.

C. Based on the requisition, the Purchasing Division will solicit information for the procurement of the requisitioned items in accordance with the threshold amounts set forth in Table 1, and the procurement methods set forth herein.

SECTION 10 – PURCHASING CATEGORIES; THRESHOLD AMOUNTS; GENERAL GUIDELINES

10.1 Delegation of Threshold Amounts

A. The procurement method and authorization authority varies based upon the amount of the purchase. Generally, all purchases for commodities, equipment and services, when the estimated cost thereof shall equal or exceed \$50,000.00 shall be purchased competitively; purchases below \$50,000.00 shall be handled in the manners specified herein, which are designed to maximize competition and ensure the county is receiving a fair price while balancing against the need for an efficient use of staff resources. The Board may waive the competitive procurement requirements when deemed to be in the best interest of the County.

B. Table 1 establishes the thresholds and procedures to govern procurement of commodities, equipment and services. Additionally, the authority for approving purchases within the established threshold set forth below is hereby delegated to the person(s) with designated signature authority. For purchases utilizing a Purchasing Card, refer to Appendix 1.

Table 1 – Purchasing Process Thresholds

Procurement Method	\$0- to \$3,500	\$3,501 to \$25,000	\$25,001 to \$50,000	\$50,001 to \$100,000	\$100,001
Verbal Quotes <i>(See Section 12.1)</i>	Department Director or designee	N/A	N/A	N/A	N/A
Requisitions/Written Quotes <i>(See Sections 9 and 12.2)</i>	Department Director or designee	Department Director or designee <i>And... Purchasing Manager</i>	Department Director or designee <i>And... Purchasing Manager And... OMB Director</i>	Department Director or designee <i>And... Purchasing Manager And... OMB Director And... County Administrator</i>	Department Director or designee <i>And... Purchasing Manager And... OMB Director And... County Administrator And... BOCC</i>
Direct Payments <i>(See Section 22)</i>	Department Director or designee	Department Director or designee	Department Director or designee	Department Director or designee	Department Director or designee

Table 1 – Purchasing Process Thresholds Continued

Procurement Method	\$0 to \$3,500	\$3,501 to \$25,000	\$25,001 to \$50,000	\$50,001 to \$100,000	\$100,001
Contracts (Amendments/Task Orders) <i>(Amendments see Section 32C; Task Orders see Section 32D)</i>	Department Director or designee	Department Director or designee <i>And...</i> Purchasing Manager	Department Director or designee <i>And....</i> Purchasing Manager <i>And...</i> OMB Director	Department Director or designee <i>And...</i> Purchasing Manager <i>And...</i> OMB Director <i>And...</i> County Administrator	Department Director or designee <i>And...</i> Purchasing Manager <i>And...</i> OMB Director <i>And...</i> County Administrator <i>And...</i> BOCC
*Change Orders (Purchase Orders /Contracts) <i>(Change orders see Section 32C-; Purchase Order see Section 33E)</i>	Department Director or designee	Department Director or designee <i>And...</i> Purchasing Manager	Department Director or designee <i>And....</i> Purchasing Manager <i>And...</i> OMB Director	Department Director or designee <i>And...</i> Purchasing Manager <i>And...</i> OMB Director <i>And...</i> County Administrator	Department Director or designee <i>And...</i> Purchasing Manager <i>And...</i> OMB Director <i>And...</i> County Administrator <i>And...</i> BOCC

* Change orders and contract amendments must be executed by the authorized individual pursuant to Table 1 who approved and executed the original purchase order or contract, unless the change order or contract amendment increase the total dollar amount to such a level that in accordance with Table 1, it shifts to another authorized individual/entity (the approval authority). In such instances the change order or contract amendment will be required to be approved and executed by the new appropriate authority pursuant to Table 1. Change orders and contract amendments shall not be used to avoid any standard purchasing procedure for procurement by the competitive procedures. The valuation of the procurement will be calculated based upon the value of the initial term of the contract to be awarded. The valuation of contract renewals will be based upon the value of the renewal term.

* For purposes of construction contracts, the County department shall not be required to have a change order executed by the individual who approved the original purchase order or contract if such change order(s) includes minor changes in the Work not involving an adjustment to the Contract Amount or an

extension to the Contract Time which would cumulatively exceeding ten percent (10%) of the Work or the Original Contract Time. Such changes shall be effective by a written executed change order which may be executed by the authorized individual pursuant to the Table 1.

C. All procurements will be procured in accordance with the methods permitted in relation to the threshold amounts, and as set forth in this Manual.

10.2 Encumbrance of Funds

A. It is the responsibility of each department director to ensure sufficient and proper funding is available prior to obligation and/or expenditure.

B. No county employee, except in cases of emergency as defined in this Manual, or as provided by Florida Statutes Chapter 252, and/or as instructed by the County Administrator, shall issue any order for delivery on a contract or open market procurement until there is, to the credit of the using department concerned, a sufficient unencumbered appropriation balance to defray the amount of such order and the order is for a budgeted commodity or service.

C. After determining availability of funds, the procurement as set forth in this Manual shall be performed. After procurement a purchase order or contract shall be approved as set forth within this Manual.

SECTION 11 - PETTY CASH

(See Table 1, Section 10 for threshold requirements for the procurement method).

11.1 Petty Cash General

Petty Cash transactions are limited to the immediate need of making change for citizens' purchases or small cash purchases necessary to continue productivity, such as tools, supplies and repair parts which do not individually exceed \$200.00. Purchases from petty cash do not require competitive quotes. Employees who are authorized cardholders in the County's Purchasing card program, are strongly encouraged to use the purchasing card whenever possible to reduce administrative time and costs.

11.2 Requirements for Petty Cash Transactions

Purchases from any petty cash fund or the reimbursement for a purchase shall be governed by the following requirements:

1. No purchase of any single item from any petty cash fund or for reimbursement shall exceed the authorized dollar limit for petty cash/reimbursement in Table 1 above.
2. Reimbursement for employees travel expenses from a petty cash fund shall not be allowed, except for local parking or toll costs.
3. Funds contained within a petty cash fund shall not be expended for the payment of salaries.
4. Expenditures from a petty cash fund or personal funds shall be reimbursed, provided:

- a. They are supported by itemized vouchers, invoices, or receipts signed by the division or department director or designee.
- b. They qualify as a proper public purpose.
- c. They are expenses included within the approved annual budget of the division or department.
- d. No purchase of any single item from any petty cash fund or for reimbursement shall exceed the authorized dollar limit for petty cash in Table 1.
- e. The custodian of petty cash must perform a monthly reconciliation and inform the finance department of any discrepancies.

11.3 Misuse of Petty Cash

Misuse of petty cash funds is subject to personal liability and disciplinary action up to and including termination of the County employee.

SECTION 12 - QUOTES.

12.1 Verbal Quotes (not to exceed \$3,500.00)

(See Table 1, Section 10 for threshold requirements for the procurement method).

A. Commodities, equipment, and services with an estimated cost within the threshold authorized in Table 1 for verbal quotes, except those purchased on p-cards and through direct purchases, shall be procured by competitive, verbal quotes. Purchases at this level do not require written quotes, except when deemed advisable by the Purchasing Division. Additionally, if there is an ongoing need for certain commodities, equipment, or services on a fairly regular basis that would otherwise qualify for a procurement through verbal quotes pursuant to the threshold amount in Table 1 if viewed in isolation, then competitive procurement may be required if the threshold in accordance with Table 1 is met in a fiscal year.

B. At least one (1) quote must be obtained for each purchase, which must then be approved by the department director. The county employee soliciting the quotes shall clearly document the commodities, equipment, or services requested on a consistent basis from each vendor to assure a like-to-like comparison and shall document the date, vendor, and quotation received for the purchasing file. Quotes may also be obtained from reputable internet vendors. All vendors providing verbal quotes must have the required expertise and capability to perform the work or supply the commodities or equipment. In determining if a vendor has the capability to perform the work or supply the commodities or equipment, consideration shall be given to the vendor's geographic proximity to the county for future ease of delivery, mobilization, or customer support after a purchase. The lowest cost, responsible and responsive vendor who is capable of performing the services or supplying the commodities or equipment shall be awarded the contract.

12.2 Written Quotations (not to exceed \$50,000)

(See Table 1, Section 10 for threshold requirements for the procurement method).

1. Commodities, equipment, and services with an estimated cost within the threshold under Table 1 shall be procured by competitive, written quotations.
2. At least three (3) written quotations must be obtained for each purchase by the Purchasing Division. In those instances where the securing of three (3) quotations is not practicable, the Purchasing Division shall provide written justification of such. The Purchasing Division shall prepare a written quotation solicitation form that clearly documents the commodities, equipment, or services requested and when needed, contact information, the due date for quotation, any vendor requirement, and other relevant transactional terms. The requested commodities, equipment, or services must be adequately described on a consistent basis to assure a like-to-like comparison among vendors. The written quotation solicitation form shall be emailed or mailed to at least three (3) vendors who have the required expertise and capability to perform the services or supply the commodities or equipment.
3. Quotes must be on company letterhead, a county approved quote form, or in a similar format with a date and signature of an authorized representative of the vendor.
4. All vendors providing written quotes must have the required expertise and capability to perform the work or supply the commodities or equipment. In determining if a vendor has the capability to perform the work or supply the commodities or equipment, consideration shall be given to the ease of delivery, mobilization, or customer support after a purchase. The lowest cost, responsible and responsive vendor who is capable of performing the services or supplying the commodities or equipment shall be awarded the contract.

SECTION 13 – TYPES OF COMPETITIVE PROCUREMENTS

13.1 Standard Formats

All competitive procurements shall be developed using a standardized format and language, unless an exception is made by the County Administrator and/or County Attorney. It should be noted on all competitive procurements that the County retains the right to reject any and all responses and may choose to reprocure at its discretion.

13.2 Requests for Proposals (RFP)

(See Table 1, Section 10 for threshold requirements for the procurement method).

A. Definition: Requests for proposals are used when the scope of work, specifications, or contractual terms and conditions cannot be well defined. Evaluation of a response is based on prior established criteria which involves more than price. A request for proposal includes, but is not limited to, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria. The Purchasing Division and department director shall decide, based on the specific services needed, if professional services are required. This decision can be made once it is determined that in-house resources are not available to adequately provide such services.

B. Criteria: The department director shall outline specific needs and objectives that will make up the scope of services to be addressed by the proposers. The Purchasing Division, in conjunction with the department director, shall prepare the criteria and development of the request for proposals which should include, but not be limited to, the following:

- Introduction;
- Background;
- Scope of work or scope of services required;
- Time schedule;
- Price schedule;
- Evaluation criteria;
- Terms and conditions;
- Selection process;
- Required forms; and
- Proposed contract.

Selection: Proposers shall be ranked by a selection committee, as further detailed in Section 31, and presentations may be made to the selection committee or board for consideration.

13.3 Invitation to Bid (ITB)

(See Table 1, Section 10 for threshold requirements for the procurement method).

A. Definition: The invitation to bid should be utilized when the County is capable of establishing precise specifications for a commodity or defining, with specificity, a scope of services for the commodities or contractual services sought and when the estimated cost of these commodities, equipment or services exceeds the amount specified in Table 1. Through this process, vendors are able to compete on a cost basis for like items or services. The selection will be based upon the lowest priced, responsive, and responsible bidder.

B. Criteria: The department director shall outline specific needs and objectives that will make up the scope of services to be address by the proposer. The Purchasing Division, in conjunction with the department director, shall prepare the criteria and development of the invitation to bid which should include, but not be limited to, the following:

- Introduction;
- Background;
- Scope of services, commodities or equipment required;
- Time schedule;
- Price sheet;
- Terms and conditions;
- Evaluation criteria;
- Selection process;
- Required forms; and
- Proposed contract.

C. Selection: Evaluation of bids shall be conducted by the Purchasing Division in conjunction

with the requesting Department Director or designee. Evaluation of bids must include consideration of the total cost of the bid.

D. A contract shall be awarded to the responsible and responsive vendor who submits the lowest responsive bid.

13.4 Invitation to Negotiate (ITN)

(See Table 1, Section 10 for threshold requirements for the procurement method).

A. Definition: The invitation to negotiate should be utilized when the scope of the project is not clearly defined and the County has determined that negotiations may be necessary to receive the best value. The invitation shall invite vendor input on the scope, schedule, and process for initiating the project. This method of procurement is frequently used in areas experiencing constant change in the marketplace and the County wants the opportunity to obtain current up-to-date goods or services at the time of contracting.

B. Criteria: The department director shall outline the general scope of services to be addressed by the proposers. The Purchasing Division, in conjunction with the department director, shall prepare the criteria and development of the invitation to negotiate which should include, but not be limited to, the following:

- Introduction;
- Background;
- Evaluation criteria;
- Selection Process;
- Required Forms;
- Proposed contract.

C. Selection: Proposers shall be ranked by a selection committee, as further detailed in Section 31, and presentations may be made to the evaluation committee or Board for consideration.

13.5 Invitation to Quote (ITQ)

(See Table 1, Section 10 for threshold requirements for the procurement method).

A. Definition: The invitation to quote format should be utilized when the County is capable of establishing precise specifications for a commodity or defining, with specificity, a scope of services for the commodities or contractual services sought and when the estimated cost of these commodities, equipment or services does not exceed the amounts specified in Table 1. Through this process, vendors are able to compete on a cost basis for like items or services. The selection will be based upon the lowest priced, responsive, and responsible bidder.

B. Criteria: The department director shall outline specific needs and objectives that will make up the scope of services to be addressed by the proposers. The Purchasing Division, in conjunction with the department director, shall prepare the criteria and development of the invitation to quote which should include, but not be limited to, the following:

- Terms and conditions;

- Scope of service or commodities required;
- Schedule;
- Proposed price;
- Selection process.

C. Selection: Evaluation of quotes shall be conducted by the Purchasing Division in conjunction with the requesting Department. Evaluation of quotes must include consideration of the total cost of the quote.

D. A contract shall be awarded to the responsible and responsive vendor who submits the lowest responsive submittal.

SECTION 14 - COMPETITIVE PROCUREMENT – THE PROCESS

All competitive procurements are to be prepared by the Purchasing Division in conjunction with issuing department, who will provide input on the scope of the commodities, equipment or services needed, the legal ads, dates, vendor lists and other pertinent information as may be required by the Purchasing Division.

14.1 Response Submission

A. Responses to all competitive procurements shall be submitted to the County/Clerk no later than the date and time designated in the instructions. The envelope containing the competitive procurement shall be sealed and marked according to instructions in the specifications. The Purchasing Division, or designee, shall date and time stamp each response as it is received and file the responses, unopened, in a secure file until the time designated for the opening. Responses received after the designated time shall be returned unopen to the sender.

B. Mandatory and non-mandatory conferences may be held when deemed necessary by the Purchasing Division. Notification of the conferences will be outlined in the competitive procurement package or provided by separate notice. However, any written material to be distributed to potential respondents must be approved in advance by the Purchasing Division and made part of the competitive procurement.

C. Registration or certification under Florida Statute Chapter 489 is required before any contract is awarded for construction work on buildings or other improvements to real property, except for roads or utilities as specified in Florida Statutes section 489.113, or otherwise exempt under Florida Statutes section 489.103.

14.2 Opening of Responses

A. All competitive procurements shall be opened in public at the time and place stated in the public notice with at least two (2) witnesses present. At least one witness shall be a County employee to record the opening. The other witness may or may not be an employee of the County, but they cannot be a respondent to the competitive procurement.

B. The purpose of the opening is to record the responses received and to ensure that the responses are in compliance with the basic requirements of the competitive procurement. Responses are not analyzed for quality or substance at the opening. See Section 27 for additional information.

14.3 Rejecting Responses

The OMB Director shall have the authority to reject any and all responses. The County will not be held responsible for any costs incurred by vendors/bidders in the case of rejection.

14.4 Correction or Withdrawal of Responses; Material Mistakes; Cancellation of Awards

A. A response submitted to the County as part of a competitive procurement may not be withdrawn unilaterally by the respondent. Correction or withdrawal of inadvertently erroneous responses before or after the competitive procurement opening, or cancellation of the awards or contracts based on such mistakes, may be permitted where appropriate. Mistakes discovered before the competitive procurement opening may be modified or withdrawn by written notice received in the office designated in the procurement prior to the time set for opening.

B. After the competitive procurement opening, corrections of mistakes shall be permitted only to the extent that the vendor can show by clear and convincing evidence that a material mistake or nonjudgmental character was made, the nature of the mistake, and the price actually intended. After the competitive procurement opening, no changes in prices or other provisions prejudicial to the interests of the County or fair competition shall be permitted. The assigned unit price, when applicable, will be the prevailing decision when an extension price is in error. In place of correction, a low bidder establishing a non-judgmental material mistake of fact may be permitted to withdraw its procurement if:

1. The response was submitted in good faith;
2. The magnitude of the error made would make enforcement a severe hardship;
3. The miscalculation was not the result of gross negligence;
4. The error was reported immediately to the County;
5. It is not later than 24 hours after the competitive procurement opening, except that if the following day is not a business day for the county, in such case, a withdrawal may be made until 12:00 noon the next County business day.

14.5 Evaluations of Invitations to Bid

In an invitation to bid process, the County may consider, but is not limited to, the following factors in addition to price when determining whether the bidder is responsive and responsible:

1. Ability, capacity and skill of the bidder to perform the contract.
2. Whether the vendor can perform the contract within the time specified, without delay, interference, or conflict with current workload.
3. Quality of performance of previous contracts.
4. Previous and existing compliance by the vendor with laws and regulations relating to the contract.
5. Sufficiency of the financial resources and ability of the vendor to perform the contract or provide the product or service.
6. Quality, availability and adaptability of the supplies or contractual services to the particular use required.
7. Ability of the vendor to provide further maintenance and service for the use of the subject of the contract.
8. Number and scope of conditions attached to the bid or quote.
9. Qualifications of personnel, licensing and corporate qualifications.
10. Evidence of improper litigation.
11. Use of one or more subcontractors with a record of poor performance.
12. For the purpose of this section, the County may consider evidence from the ten-year period preceding the subject bid submittal date.
13. In the event the lowest, responsive, responsible bid for a construction project exceeds the architectural or engineering cost estimates, the County Administrator or designee is authorized, when time or economic considerations preclude rebidding of work of a reduced scope, to negotiate an adjustment of the scope of work with the lowest, responsive, responsible bidder, in order to bring the bid within the amount of available funds. If the cost estimates exceed the County Administrator's threshold amount, results of negotiations will be contingent upon Board approval.

14.6 Evaluation of Requests for Proposals, Requests for Qualifications, and Invitations to Negotiate

All responses to a request for proposals, requests for qualifications and invitations to negotiate that are deemed to meet the basic requirements of the competitive procurement and have not been rejected shall be distributed to the selection committee, as established in Section 31, for review in accordance with the established time frames outlined in the competitive procurement.

14.7 Intent to Award

A. Once the County has determined the lowest, responsive, responsible bidder as provided for in Section 14.05 above or once the selection committee has completed its evaluation in accordance with Section 14.06 above, the Purchasing Division shall prepare and post a notice of intent to award the competitive procurement.

B. The notice of intent to award shall be sent by electronic mail to the selected vendor, all responsive vendors to the competitive procurement, and the Board of County Commissioners within 24 hours of the determination. The notice of intent to award shall also be posted in the County Administration building and on the County website within 24 hours of the determination.

C. Upon the distribution of the notice of intent to award to all responsible vendors, which shall be considered done once the notice is sent by the County, the time period for a procurement challenge, outlined in Section 30, shall begin to run.

D. Final Payment as outlined in Section 37, shall be sent by electronic mail to the Board of County Commissioners on the weekly intent to award. Final payment will be made unless a Commissioner of the Board of County Commissioners requests, after receiving the intent to award that it be placed upon the Board's agenda for review, in which case it shall be placed onto the next available Board agenda.

14.08 Notice of Award and Contract Negotiations

A. After the challenge period in Section 30 has expired, the procurement shall be awarded with reasonable promptness by the person(s) authorized to approve the purchase, as provided in Table 1 of this Manual, unless a Commissioner of the Board of County Commissioners request after receiving the intent to award that it be placed upon the Board's agenda for review, in which case it shall be placed onto the next available BOCC Agenda. Any notice of award shall be sent to the successful respondent.

B. All procurements will be formalized by entering into either a contract with, or issuing a Purchase Order to, the successful respondent as described below.

C. Upon approval of the selection, the OMB Director or designee, in consultation with the issuing department director and, if requested, with the assistance of the County Attorney, will negotiate a contract with the top ranked vendor.

D. Should the OMB Director or designee be unable to negotiate a satisfactory contract with the top ranked vendor within a reasonable time, upon approval by the County Administrator, negotiations with the vendor shall be formally terminated by letter to the vendor. The OMB Director or designee shall then undertake negotiations with the second ranked vendor, if any.

E. Should the OMB Director or designee be unable to negotiate a satisfactory contract with the second ranked vendor, upon approval by the County Administrator, negotiations with the vendor shall be formally terminated by letter to the vendor. The OMB Director or designee shall, with the approval of the Board, negotiate with additional vendors from the original shortlist or re-procure.

F. Once a satisfactory contract has been reached, the contract shall be presented for approval and execution by the appropriate authority as provided in Table 1. Upon execution by both parties, the notice to proceed shall be issued.

SECTION 15 - NOTICE REQUIREMENTS FOR COMPETITIVE PROCUREMENTS

15.01 Newspaper

A. Noticing of all requests for proposals, requests for qualifications, invitations to bid, invitations to quote, and invitations to negotiate (unless waived by the Board) shall be done by publishing once in a newspaper of general circulation in the County at least 14 calendar days prior to the date set for receipt of the competitive procurement.

B. If state or federal law or a state or federal agency provides other required methods of newspaper notice which differentiate from the County's requirements, in those circumstances, the requirements of state or federal law or state or federal agency shall be followed when advertising in a newspaper.

C. Florida Statutes section 255.0525, states that any construction project that is projected to cost more than \$200,000.00 shall be publicly advertised at least once in a newspaper of general circulation in the County at least 21 calendar days prior to the bid received date and at least five calendar days prior to any scheduled pre-bid conference. If the construction project is expected to cost more than \$500,000.00, it must be advertised at least 30 calendar days prior to the bid received date and at least five calendar days prior to any pre-bid conference.

D. The notice shall include a general description of the goods and services to be purchased, the location where specifications may be obtained, closing date, and the time and place for receipt of and the opening of the competitive procurement.

E. Notice of all requests for written quotations, pursuant to Section 12, shall not require a newspaper ad.

15.02 Website

When advertised in newspapers, the notice shall also be listed on the official County website, and other industry sources as appropriate.

SECTION 16 - REQUEST FOR QUALIFICATIONS (CCNA)

A. A request for qualifications (“RFQ”) is used where the specifications of required services are broad and specialized in nature. Evaluation of a response is based on prior established criteria which involves more than price. The purpose of obtaining professional services is to offer to the County special expertise, practical experience, knowledge, resources and an objective outside professional opinion. An RFQ must be utilized in CCNA procurements, but may be used in other instances when deemed appropriate by the Purchasing Division.

B. The provisions and exemptions contained in Florida Statutes section 287.055 (commonly known as the Consultants’ Competitive Negotiation Act, “CCNA”), shall apply herein for the procurement of all professional architecture, engineering, landscape architecture, or registered surveying and mapping services for projects that exceed certain statutory dollar thresholds.

C. For more information on CCNA please refer to Florida Statutes Sections 287.017 and 287.055.

D. Selection of consultants for FTA funded projects shall be acquired in accordance with The Brooks Act, 40 U.S.C. 11, et seq, as may be amended from time-to-time.

SECTION 17 - EMERGENCY PROCUREMENTS

A. An emergency procurement is a procurement necessitated by a sudden unexpected turn of events (e.g., including but not limited to acts of God, riots, fires, floods, hurricanes, accidents, terrorism, or any circumstances or cause beyond the control of the agency in the normal conduct of its business) where the delay incident to competitive procurement would be detrimental to the interest of the County. It may also be a condition that stops or seriously impairs the necessary function of County government.

B. Following all purchases under this emergency procurement section, a report shall be prepared by the department director who initiated the procurement. The report must include complete documentation clearly stating justification for exception from normal purchasing procedures, an itemization of all individual transactions relating to the emergency procurement, and itemization of any additional work hours above and beyond the affected employees’ usual work schedule, and documentation of communication with other governmental entities (FEMA, SERT, etc.) that have taken place.

C. In the case of emergencies that require the immediate purchase of commodities, equipment or services, the OMB Director or his/her designee, shall be empowered to secure such commodities, equipment or services without competitive bidding. In this event, all measures as are reasonably possible under the circumstances shall be taken to assure the maximum cost benefit to the County of the commodities, equipment or services procured.

D. In addition during non-business hours, a department director, is authorized to make purchases without competitive bids, when an emergency arises and such immediate purchases are necessary to protect the health, safety, welfare, or property of the County or any of its citizens or to continue operations of the department.

E. Documentation for emergency purchases pertaining to the above shall be submitted to the County Administrator with a detailed explanation, and support materials attached if applicable, within ten working days after the event occurred. Emergency purchases that meet the \$100,000.00 or greater amount shall be submitted to the Board for ratification.

F. While Government Services Administration (GSA) schedules 70 and 84 can be used by the County for routine business, all GSA schedules become open to County use during recovery from a natural disaster or in response to a public health emergency.

SECTION 18 - SOLE SOURCE PROCUREMENTS

A. A sole source is when the commodity or service can be legally purchased from only one source. This is usually due to the source owning patents and/or copyrights. A requirement for a particular proprietary item does not justify a sole source purchase, if, there is more than one potential supplier for that item. Use of Brand Names and Model numbers does not constitute a sole source.

B. A contract may be awarded, except as otherwise provided under state law, for a supply, service, material, equipment or construction item(s) without competition when the OMB Director or designee, certifies in writing, after conducting a good faith review of available sources, that there is only one available source for the required material, supply, service, equipment, or construction item(s).

C. Prior to award, a notice of intent to award shall be posted for any and all sole source procurements as set forth in Section 14.07 of this policy.

D. Such awards will be made within the authorized procurement limits identified in Table 1 of this Manual. When a purchase exceeds the threshold amount for staff approval, the item will be placed on the agenda for Board approval.

E. The Purchasing Division shall be authorized, after initial sole source certification, to make additional purchases from a sole source vendor for a reasonable specified period of time as set forth in a written agreement between the County and contractor or until such time as contrary evidence is presented regarding sole source eligibility, whichever period is less.

SECTION 19 - SINGLE SOURCE PROCUREMENTS

A. A single source means that a commodity or service can be purchased from multiple sources, but, in order to meet certain functional or performance requirements (e.g., parts matching existing equipment or materials) there is only one economically feasible source for the purchase.

B. Purchases of goods and/or services from a single source may be exempted from the competitive procurement requirements upon confirmation that: (1) the use is justified based on costs or interchangeability factors; (2) the use is recommended by the project architect, engineer, or affected department director; and (3) the rationale for single source is approved by the OMB Director. Such awards will be made within the authorized limits identified in Table 1 of this

Manual.

C. Prior to award, a notice of intent to award shall be posted for any and all single source procurements as set forth in Section 14.07 of this policy.

D. When a purchase exceeds the threshold amount for staff approval, the item will be placed on the agenda for Board approval.

E. The Purchasing Division shall be authorized, after initial single source certification, to make additional purchases for a single source vendor for a reasonable specified period of time as set forth in a written agreement between the County and contractor or until such time as contrary evidence is presented regarding single source eligibility, whichever period is less.

SECTION 20 - COOPERATIVE PROCUREMENTS (PIGGYBACKING)

20.1 General Cooperative (Piggybacking) Procurement Requirements

A. The Purchasing Division shall have the authority to purchase from and join with other units of governments in cooperative purchasing ventures when the best interest of the County would be served thereby. It is standard policy of the County to cooperate with other government agencies in the purchase of commodities, equipment and services required by the County.

B. The most common form of cooperative purchasing agreements include, but are not limited to, purchasing from contracts issued by the State of Florida, Federal General Services Administration, U.S. Communities, National Joint Powers Alliance, and other government pricing for specific commodities, equipment and services.

C. When any other government agency had competitively procured and awarded any contract for any commodities or service, the County may purchase that commodity or service from the awarded vendor at the awarded price if the original bid specifications and award allow it. Where the public purchasing unit administering a cooperative purchase complies with the requirements of this Manual, the County when participating in such a purchase, shall be deemed to have complied with the provisions of this article. Such purchases shall be made without additional county competitive procurement provided that the funding has been appropriated and the purchase has been authorized by a person with signatory authority as provided in Table 1.

D. The County may bid and award the purchase of any commodities, equipment or services with the stipulation that any other government agency may also purchase the awarded product or service at the same awarded price.

20.2 Cooperative Procurements - Documentation Requirements

The following documentation is the minimum required to use another government entity's awarded contract.

1. Florida Contracts. The Purchasing Division is authorized to purchase commodities, equipment or services for any dollar amount from authorized vendors listed on the respective state contracts (state term continuing supply contracts, SNAPS agreements (state negotiated agreement

price schedules), agreements resulting from invitations to negotiate (ITN), the Florida Sheriff's Association statewide purchasing contract, or other such contracts authorized by statute for use by local governments) of the Florida Department of Management Services, other state agencies and groups. For all cooperative procurements from state contracts, the current state contract number is required. If the contract has fixed unit prices, a copy of the contract is required. If the contract is a percent discount from list, then a copy of the original manufacturer's list price must be attached. This will usually be in the form of a published price list. If only some of the items on the contract are being sought, then only the pages with those prices are required.

2. Federal GSA contracts. The Purchasing Division is authorized to purchase commodities, equipment and services for any dollar amount from authorized vendors listed on the eligible federal supply schedules (such as GSA schedule 84 for Emergency Preparedness and First Responder Equipment, Training and Services, GSA schedule 70 for Information Technology) issued by the Federal General Services Administration.

a. For all cooperative procurements off federal GSA contracts, a copy of the GSA contract showing the contract name, number and contract term is required. The ordering information pages and the pages with the pricing are also required. If the contract is a percent discount from list, then a copy of the original manufacturer's list price must be attached. This will usually be in the form of a published price list. If only some of the items on the contract are being sought, then only the pages with those prices are required.

3. Contracts with other government entities. The Purchasing Division shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the county would be served thereby, and the same is in accordance with county and state law. The Purchasing Division shall appropriately document such cooperative procurement arrangements. All cooperative procurements conducted under this section shall be through contracts awarded through full and open competition, including use of source selection methods equivalent to those required by this Manual. Each selection method shall clearly state the intention to include participation by other units of government as a requirement for use in cooperative procurement. For all cooperative procurements from other government entities, the required documentation includes:

- a. A complete copy of the original procurement;
- b. A copy of award letter/memo/agenda item with minutes by the government entity to the vendor to document award;
- c. A complete copy of the vendor's proposal; and
- d. A complete copy of the current contract with the vendor and any amendments thereto. If federal funds are used, the County may exercise the option to utilize other government contracts provided that:
 - a. The original contract was procured in compliance with 2 C.F.R.;
 - b. An assignability clause is included in the originating government's contract, the terms and conditions are substantially similar to the terms and conditions of the option as stated in the

original contract at the time it was awarded;

c. The option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous;

d. The original contract contained an assignability clause and that the terms and conditions of that contract meet the FTA requirements (if funded by FTA);

e. The original contract contains appropriate assignability provisions that permit the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions;

f. The contract price is fair and reasonable;

g. The contract provisions are adequate for compliance with all Federal requirements;

h. The scope of work to be performed falls within the scope of work under the original contract and there are no cardinal changes to the contract, the scope of the assigned contract originally procured by the assigning party does not exceed the amount of property and services required to meet the assigning party's original, reasonably expected needs. The regulation at 44 C.F.R. § 13.36 requires the grantee or subgrantee to have procurement procedures that preclude it from acquiring property or services it does not need. Therefore, a contract would have an improper original scope if the original party added excess capacity in the original procurement primarily to permit assignment of those contract rights to another entity. Moreover, an assignable contract with an overbroad scope of work may lead to unreasonable pricing and thus should not be used. For example, a statewide debris removal contract that does not have pricing that accounts for variables in the actual scope of work required by a local government subgrantee or the specific conditions of that local market may lead to unreasonable pricing;

i. The quantities the assigning party acquired, coupled with the quantities the acquiring grantee or subgrantee seeks, do not exceed the amounts available under the assigning entity's contract.

SECTION 21 - AIRPORT PROMOTIONAL TRAVEL AND PROMOTIONAL EXPENSES; TOURISM PROMOTIONAL, PRODUCTION, MEDIA, AND ENTERTAINMENT – RELATED EXPENSES

21.1 Airport Promotional Travel and Promotional Expenses

1) The Airports Department is authorized and approved to make expenditures of airport revenues to publicize, advertise, and promote the activities of the County's airports; to make known the advantages, facilities, resources, products, attractions, and attributes of the County's airports; to create a favorable climate of opinion concerning the County's airports; to cooperate

with other agencies, public and private, to accomplish these purposes; and, in furtherance thereof, to authorize expenditures for the purposes here enumerated, including meals, hospitality, and entertainment of persons in the interest of promoting and engendering goodwill toward its airports (other than direct subsidy of air carrier operations which is prohibited) provided they are in accordance with section 331.20, Florida Statutes. All travel, meals, hospitality, and entertainment of person's expenses shall be pre-approved in accordance with the threshold approval and authority set forth in Table 1.

21.2 Tourism Promotional and Entertainment-Related Expenses

1) The Tourist Development Department is authorized and approved to make expenditures of tourist development tax revenues in accordance with Section 125.0104(9), Florida Statutes in the performance of job duties carried out pursuant to the Tourist Development Plan, Sales & Marketing Plan, and/or annual budget including, but not limited to, trade shows, sales missions, road shows, familiarization tours, press trips, ECCC site visits, and film festivals. Reimbursement for promotional and entertainment related expenses is governed by County policies as applied under the provisions of Section 112.061, Florida Statutes, as well as the provisions of Section 125.0104(9), Florida Statutes and the Tourist Development Department Operations & Procedures Manual as amended from time-to-time. All travel, meals, hospitality, and entertainment of person's expenses shall pre-approved in accordance with the threshold approval and authority set forth in Table 1. Additionally:

a. The County recognizes the rental of space, furniture, services, and accessories that may be required in connection with the performance of promotional duties (e.g. trade show, road show, sales mission) meets the statutory requirement of being essential to tourism promotion and only available if advance payment is made. These types of purchases shall not be considered payment in advance requiring Board approval.

b. The County recognizes that success in the groups, convention center, and film sales industries is often the result of sales calls, continual networking, and relationship cultivated over a period of time through meetings and discussions for which no published, posted, or emailed agenda or correspondence exist. In such case, an outline of activities including names, titles, dates, locations and purpose/discussion shall be provided to document entertainment-related expenses.

21.3 Promotional and Entertainment-Related Reimbursement Request

The Promotional and Entertainment-Related Reimbursement Request form shall be prepared to account for the expenditure of funds as provided for herein.

21.4 – TOURIST DEVELOPMENT DEPARTMENT (TDD) PRODUCTION

21.41 Production

- 1) Production is defined as the development of creative assets, research, and publicity events (i.e. TDD-hosted events that are not part of a paid media buy).
- 2) The advertising agency shall develop a specifications sheet and obtain written competitive pricing from third-party vendors. The County recognizes the importance of qualitative factors in marketing to reach the desired target audience. If the lowest cost vendor is not selected, the advertising agency must provide justification as to how the selected vendor best meets the scope of services. This process shall be deemed to satisfy the competitive bid process of the County's Purchasing Manual.
- 3) All production estimates shall be approved in advance by the County pursuant to the County's procurement approval thresholds.
- 4) All production estimates shall identify payment terms and deliverable requirements.
 - a. Travel may be included at a not-to-exceed amount based on a set number of trips, waiving travel policy requirement of receipts and Voucher for Traveling Expenses.
- 5) All production estimates shall be encumbered in the accounting system and scanned into the document portal.

21.42 Production Proof of Performance & Payment

- 1) Invoicing shall be in sufficient detail for pre- and post-audit review (e.g. original vendor invoices, deliverables) to ensure the services were performed and the correct amount has been invoiced.
- 2) The County shall issue payment to the advertising agency based on reconciliation of invoicing to the approved production estimate. Examples of acceptable deliverables include, but are not limited to:
 - a. Creative Assets – photography, audio, video file
 - b. Research – plans, scripts, reports
 - c. Publicity Events – documentation of occurrence (e.g. photos, rsvp/attendance list, media coverage)
- 3) TDD production payments shall be submitted via Contract Payment Form to the advertising agency.

21.43 Advance Payment

- 1) Pursuant to Section 215.422(14) F.S. and County policy, Board approval for advance payment may be granted if the payment results in savings equal to or greater than the amount earned by

investing the funds and paying later or if the payment is essential to the operations of the agency and the goods or services are available only if advance payment is made.

- a. The County recognizes the industry standard for progress payments for production assignments. Advance payment of fees is authorized when the production estimate identifies progress payment deliverable milestones and final payment upon receipt of deliverable.
- b. All other requests for payment in advance require Board approval.

21.5 TOURIST DEVELOPMENT DEPARTMENT (TDD) PAID MEDIA

21.51 Media Planning

- 1) Media planning is defined as obtaining pricing information for potential media placements and related events to develop the Media Plan contained within the annual Sales & Marketing Plan (SMP) presented to the Tourist Development Council and Board. The TDD’s advertising agency performs media planning directly with media vendors.
 - a. For purposes of this section, “media” shall be defined to include traditional types such as print, digital, broadcast, and outdoor, as well as emerging types such as media events and takeovers.
- 2) In consideration as to whether a particular media source meets the needs of the County, the advertising agency may consider, but is not limited to, price, size, placement location, added value items (e.g. online banners, e-blasts, social media), time of day, season, target audience, and public relations potential. Competitive pricing from media sources that reach the desired target audience for media placements and events shall be obtained by the advertising agency’s buying team and shall be deemed to satisfy the competitive bid process of the County’s Purchasing Manual.
- 3) The Media Plan is presented to the Tourist Development Council and Board of County Commissioners for approval. Actual dollar spend and media placements may vary from the adopted Media Plan, but vendors and paid media reimbursement shall not exceed the total Media Plan dollar amount approved for the year.

21.52 Media Negotiation and Insertion Orders

- 1) Media negotiation is defined as finalizing media placement details and results in a detailed annual media flowchart along with media insertion orders/confirmations/contracts (hereafter “insertion orders”) specifying buy details and payment terms. All components related to a particular media package, including print, digital, added-value, events, etc. shall be included on one insertion order.

- a. The Tourist Development Department Director is authorized to sign insertion orders for media placements identified on the approved Media Plan, and modifications thereto to ensure media is responsive to market conditions and media opportunities, regardless of dollar value on behalf of the County, so long as the total dollar value of the approved Media Plan is not exceeded.
 - b. Insertion orders for media placements not included on the approved Media Plan, and modifications thereto, shall be approved pursuant to the County's procurement approval thresholds.
 - i. For purposes of determining approval authority, the net/actual cost of the media buy shall be used rather than the total market/promotional value.
- 2) All insertion orders shall be at net cost without markup and approved in advance by the County.
 - 3) All insertion order shall identify payment terms and proof of performance requirements.
 - 4) All insertion orders shall be encumbered in the accounting system and scanned into the document portal.

21.53 Media Proof of Performance and Payment

- 1) Invoicing shall be in sufficient detail for pre- and post-audit review (e.g. original vendor invoices, advertising materials, proof of performance) to ensure the services were performed and the correct amount has been invoiced.
- 2) The advertising agency shall review and approve all paid media invoices.
- 3) The County shall issue payment directly to media vendors based on reconciliation of invoicing to the approved insertion order. Examples of acceptable proof of performance include, but are not limited to:
 - a. Itemized vendor invoice in sufficient detail to identify gross and net cost, run dates, unit impressions, net media cost per thousand impressions (CPM's), and any associated fees
 - b. Recapitulation of debits/credits affecting previously submitted invoices
 - c. Print – actual publication; the tear sheet alone is not acceptable
 - d. Digital – screen shots demonstrating creative placement and statistics regarding impressions, click-throughs, and geo-targeting.
 - e. Broadcast – actual broadcast report or affidavit of performance
 - f. Outdoor – photo of billboard and physical location, impressions report if digital
 - g. Media Events – documentation of occurrence (e.g. photos, rsvp/attendance list, media coverage)

- 4) TDD paid media payment requests shall be submitted via Direct Payment to the media vendor on the insertion order.

21.54 Advance Payment

- 1) Pursuant to Section 215.422(14) F.S. and County policy, Board approval for advance payment may be granted if the payment results in savings equal to or greater than the amount earned by investing the funds and paying later or if the payment is essential to the operations of the agency and the goods or services are available only if advance payment is made.
 - a. The County recognizes the industry standard for media production and media event setup/activation fees is advance payment. Advance payment of these fees is authorized when the insertion order identifies progress payment deliverable milestones and final payment upon production or event conclusion.
 - b. All other requests for payment in advance require Board approval.

SECTION 22 – RECOGNITION AND HOSPITALITY

22.1 Purpose

The expenditure of public funds in compliance with the requirements of this policy are declared to serve a proper and valid public purpose, and the requirements set forth herein, provide controls to guard against abuse and assure accountability to the taxpayers and the public.

22.2 Policy

It shall be the policy of the County to establish clear and concise guidelines for the expenditure of funds to be used for approved County events or recognition to employees, officials and volunteers within the county government, and to governmental boards, councils, committees, and other ad hoc groups established by the County and their members.

22.3 Authority

The County Administrator or designee shall be authorized to approve the expenditure of public funds for the purposes below.

22.4 Procedures

1. Authorized Expenditures

A. The reasonable cost of food, refreshments, and non-alcoholic beverages, to include meal utensils and associated items, pursuant to approval:

- 1) served at a meeting, training program, recognition event, workshop or function held by Okaloosa County specifically designed to recognize longevity, retirement, or meritorious service to

county government; or to improve employee work skills or professionalism; or to recognize completion of specialized court programs; or to otherwise enhance work productivity.

2) to be consumed by members of the public in or on the grounds of county- owned or county-controlled facilities or property during an open house or special event, including but not limited to meetings of regional or intergovernmental agencies or organizations when held at a county facility, where furnishing of such food and refreshment is a customary role of the host agency.

B. Frames, plaques, certificates, trophies, pins and other suitable tokens of recognition to acknowledge significant contributions by individuals for their service to county government and the community to include employees, volunteers, members of unpaid advisory boards, councils and committees.

C. Coffee and water available for the public who are visiting the County Commission offices.

2. Approval

A. Recognition and hospitality items detailed and adopted in the annual budget are considered approved by the County Administrator.

B. Other authorized expenditures not exceeding \$100 may be approved by the Department Director and the Deputy County Administrator.

C. Any other requests must be pre-approved in writing by the County Administrator.

D. Documentation must be provided with monthly P-Card Approval Reports (or other approved payment method) and must include:

- 1) the date.
- 2) a list of items and purchase price.
- 3) the authorized event or purpose.

SECTION 23 - DIRECT PAYMENTS

The following types of payments are exempt from the competitive procurement requirements of this Manual, but must be approved in accordance with the authorized individual as set forth in Table 1. After receiving the appropriate approval, all departments shall submit payment requests directly to Finance Department for the following items:

1. Postage/Shipping;
2. Subscriptions, publications, legal advertisements;
3. Memberships and associated fees;
4. Travel (Hotel, Registration, Employee, Transportation of Discharged Inmates per section 951.04, Florida Statutes);
5. Training (Tuition, Lab Fees, Books, Required Course Material for Approved Schooling);
6. Permits;
7. Utilities (Electric, Water & Sewer, Phone, Garbage, Internet, Cable Television, Medical Oxygen, etc.);
8. Court Orders;
9. Recurring Budgetary Appropriations (with County Administrator's annual approval);
10. Notary Services;
11. Risk Management Claim Settlements;
12. Refunds (Deposits and Overpayments);
13. Employee Reimbursements;
14. Recording Fees;
15. Title insurance, and Title searches;
16. Value Adjustment Board Fees;
17. Insurance payments for coverage for property, liability and special risk insurance;
18. Lectures/training by Individuals;
19. Court Reporting Services;

20. Vehicle Registration;
21. Electronic Payments to the State of Florida and the IRS;
22. Florida Department of Law Enforcement Payments (FDLE);
23. Software modification services by the copyright holder, maintenance agreements, and related software enhancements to installed software purchased through competitive means.
24. TDD Paid Media.
25. Payments for employee drug testing medical services.
26. Payment of invoices on behalf of the State Attorney's Office, Public Defender, and Court Administration-IT when the State's \$2 filing fee is exhausted.

SECTION 24 - OWNER DIRECT PURCHASES CONSTRUCTION MATERIALS, SUPPLIES AND OR EQUIPMENT

Pursuant to Florida Statutes, Section 212.08(06), and Florida Administrative Code, 12A-1.094, Okaloosa County is exempt from Florida Sales Tax for purchase of construction materials, supplies and/or equipment incorporated into a construction project. Under this program, only the Florida Sales Tax rate shall apply. All owner direct purchases for supplies and materials for use in County construction projects shall be made in accordance with Owner Direct Purchase Manual set forth in Appendix 2.

SECTION 25- IDENTICAL (TIE) PROCUREMENT RESPONSES

In cases of identical procurement responses, the award shall be determined either by lot or on the basis of factors deemed to serve the best interest of the County. In the case of the latter, there must be adequate documentation to support such a decision.

SECTION 26 - UNAUTHORIZED PROCUREMENTS

26.1 Ultra Vires Procurements

Except as herein provided, it shall be a violation of Board policy for any officer, employee or agent of the board to order the purchase of any commodities, equipment or services or to make any contract within the purview of this Manual other than through the guidelines established in this Manual. Any purchase order or contract made contrary to the provisions herein shall be considered to be an ultra vires act, shall not be approved, and the County shall not be bound thereby.

26.2 Subdividing Procurements

Purchases, orders, or contracts that are subdivided to circumvent the requirements of this Manual or threshold authority as set forth in Table 1 shall be considered unauthorized purchases and are prohibited.

SECTION 27 - MINORITY, WOMEN, AND SMALL BUSINESS ENTERPRISE (W/MBE) AND DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM.

27.1 General

A. The purpose of the minority, women, and small business enterprise program and Disadvantaged Business Enterprise is to provide guidance in the outreach of W/MBEs to ensure awareness and opportunities of doing business with Okaloosa County. The minority, women, and small business enterprise program shall only apply to those projects, services, or commodities funded by a federal or state grant/contract/agreement having W/MBE requirements and, not otherwise covered by a W/MBE or disadvantaged business enterprise program.

B. The Purchasing Division will ensure compliance with this purpose by ensuring its requirements are included in competitive procurements as it applies to both primary and subcontractors.

C. The County will accept certification of W/MBE status from the City of Tallahassee, Leon County and State of Florida, Office of Supplier and Diversity as well as the Florida Department of Transportation (FDOT), DBE program in lieu of creating its own certification program. The County may also consider and accept certification from other State of Florida, county or city programs on a case by case basis.

27.2 W/MBE Requirements

A The County will utilize the State of Florida and/or when deemed appropriate FDOT directories to notify certified W/MBE firms of procurement opportunities in Okaloosa County. The efforts of such outreach shall be maintained in the original procurement solicitation file.

B When deemed appropriate by the County, primary contractor that intends to use subcontractors shall also use the State of Florida, and/or when deemed appropriate FDOT directories of W/MBE to solicit W/MBEs for subcontracting opportunities under a primary contract.

C. When deemed appropriate by the County, primary contractor that intends to use subcontractors shall be responsible for documenting outreach activities in accordance with the competitive procurement document.

SECTION 28 - PUBLIC RECORDS AND PUBLIC MEETINGS INVOLVING PROCUREMENTS

28.1 Public Records

A. The County is governed by the state public records laws provided in Florida Statutes Chapter 119. Pursuant to current state law, responses to competitive procurements received by the County may be exempt until such time as the County provides notice of an intended decision or until thirty (30) days after opening, whichever occurs first. Certain proprietary and financial

information from vendors may also be confidential or otherwise exempt from public disclosure.

B. Official records and documents shall be retained per the requirements set forth in the Florida Statutes regarding records retention.

28.2 Public Meetings

A. The County is governed by the state public meeting laws as provided in Florida Statutes section 286.011. Any meetings of a board or committee where presentations, rankings, short listings, or other award recommendations or decisions are to be made shall be held at a duly noticed public meeting, unless otherwise exempt from Florida Statutes section 286.011.

B. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive procurement, at which a vendor makes an oral presentation as part of a competitive procurement, or at which a vendor answers questions as part of a competitive procurement is exempt from Florida Statutes section 286.011.

C. Any portion of a negotiation team meeting at which negotiation strategies are discussed is exempt from Florida Statutes section 286.011.

D. A complete recording shall be made of any meeting, or portion thereof, that is exempt from state public meeting laws. The recording of, and any records presented at, the exempt meeting are exempt from Florida Statutes section 119.07(1), until such time as the County provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs first.

SECTION 29 - CONE OF SILENCE

29.1 Cone of Silence

A cone of silence shall be established on all County competitive selection processes. The cone of silence prohibits any communication regarding a ITB, RFP, ITQ, ITN, RFQ or other competitive solicitation between the bidder (or its agents or representatives) or other entity with the potential for a financial interest in the award (or their respective agents or representatives) regarding such competitive solicitation, and any County Commissioner or County employee, selection committee member or other persons authorized to act on behalf of the Board including the County's Architect, Engineer or their subconsultants, or anyone designated to provide a recommendation to award a particular contract, other than Purchasing Division staff. The cone of silence shall be in effect from the time of advertisement until contract award. Each competitive solicitation shall provide notice of the cone of silence requirement.

29.2 Exceptions to the Cone of Silence

The cone of silence shall not apply to:

1. Communications at any public proceeding or meeting, including pre-bid conferences, selection committee presentations or pre-award meetings.

2. Communications during contract negotiations between designated County employees and the intended contract awardee.
3. Communication with a vendor by a Purchasing Division employee following bid opening to clarify the vendor's bid or intended scope of services.
4. Communication following the filing of a protest between the protesting party and the Purchasing Division, County Administrator's Office and County Attorney's Office, including, but not limited to, during the dispute resolution process provided herein.
5. Purchases exempt from competitive selection, sole source procurements, single source procurements, and emergency procurements, as defined in this Manual.
6. Communications with existing vendors in the performance of existing contracts.

29.3 Termination of the Cone of Silence

The cone of silence shall terminate when the Board, or County employee authorized to act on behalf of the Board, takes action to end the selection process (for example, when the intent to award is issued, all bids or responses are rejected or any other action to end the selection process).

SECTION 30 – GRANT FUNDING USED IN PROCUREMENTS

A. Expenditures other than general or enterprise fund tax dollars may require special processing because of specific legal terms and conditions placed by the funding agency. Grants often have certain purchasing requirements that are different or additional to the County's purchasing manual and require special purchasing procedures. For example, federal grant pass through contracts, see Attachment 3 for additional procurement requirements. It is the responsibility of the using department to identify any special purchasing requirements or provisions, notify the Purchasing Division of them, and to ensure that all requirements are followed.

B. Unless otherwise specified in the grant, all grant purchases shall follow the County's purchasing manual.

C. Purchases utilizing Federal Transit Administration (FTA) and/or other federal funds must comply with all requirements of Title 2 of the Code of Federal Regulations (CFR) and FTA Circular C 4220.1F, as amended from time to time, and shall include all federal contract clauses, and Executive Orders, as applicable.

SECTION 31 – PROCUREMENT CHALLENGE

31.1 General – Procurement Challenge

Any competitive procurement award recommendation may be challenged on the grounds of material irregularities in the procurement procedure, or material irregularities in the evaluation of

the response.

31.2 Time Requirements for a Challenge

A. To initiate a challenge, the vendor must file a notice of intent to challenge the procurement in writing with the Purchasing Division within three (3) business days of posting of the notice of intent to award in accordance with Section 14.07.

B. A formal written procurement challenge shall be filed within three (3) business days in the County Administrator's office, after the date on which the notice of intent to challenge has been submitted.

31.3 Untimeliness of Challenge and Standing

Failure to file a timely notice of intent to challenge, or failure to file a timely formal written procurement challenge shall constitute a waiver of procurement challenge proceedings. Vendors who do not submit a legitimate response to the competitive procurement challenge shall constitute a waiver of procurement challenge proceedings. Vendors who do not submit a legitimate response to the competitive procurement do not have standing to file a protest. Furthermore, vendors who would not be awarded the subject contract, even if the protest were successful, lack standing.

31.4 Contents of the Notice of Intent to Challenge and Formal Written Challenge

A. The notice of intent to challenge shall contain at a minimum: the name of the vendor, the vendor's address, e-mail address, fax number and phone number, the name of the vendor's representative to whom notices may be sent, the name and procurement number of the competitive procurement, and a brief factual summary of the basis of the intended challenge.

B. The formal written procurement challenge shall contain at a minimum: the name of the vendor, the vendor's address, e-mail address, fax number and phone number, the name of the vendor's representative to whom notices may be sent, the name of the procurement number of the competitive procurement, a clear statement of the grounds on which the challenge is based, refer to the statutes, laws, ordinances, or other legal authorities which the challenger deems applicable to such grounds and specific request the relief to which the challenger deems itself entitled by application of such authorities to such grounds.

31.5 Agency Action/Determination for a Challenge

The County Administrator shall, within ten (10) business days of receipt of the formal written challenge, cause the challenge to be reviewed and provide a written recommendation as to the challenge. In the event the challenge is not resolved, the Board shall, within a reasonable time, be presented with the written challenge and the County Administrator's analysis and recommendation to the challenge prior to award of the contract. The Board shall consider the challenge and the County Administrator's analysis and recommendation and issue a written determination as to the challenge. The Board's decision shall constitute final agency action.

31.6 Tolling of Procurement Process and Exceptions

A. The procurement subject to the protest shall not proceed until a final decision is made; unless the Board makes a determination that the contract must proceed without delay to protect the interest of the County.

B. Nothing herein relinquishes the County's right to waive irregularities and formalities in accordance with its procurement package and instructions. Further, nothing herein shall create any rights in the unsuccessful challenger.

SECTION 32 – PROCUREMENT SELECTION COMMITTEE

A. For purposes of reviewing Requests for Qualifications, Requests for Proposals, and Invitations to Negotiate, a standing selection committee shall review the procurements and make recommendations to the Board.

B. The Selection Committee shall be comprised of five primary members of County staff and five alternate members of County Staff. The Board shall designate every fiscal year the Selection Committee members and their alternates.

C. The Selection Committee shall meet as needed to review procurements and a quorum of three members is required to take any official action. All meetings of the Selection Committee shall be advertised, open to the Public, and have minutes recorded.

D. The Board may establish a separate selection committee in to review any particular procurement in lieu of the Procurement Selection Committee.

Part 3 – Contracts and Purchase Orders

SECTION 33 - GUIDELINES OF USE CONTRACTS, PURCHASE ORDERS, CHANGE ORDERS, CONTRACT AMENDMENTS, and TASK ORDERS

All procurements will require a contract and/or purchase order with the vendor. The following provides guidance as to when each method shall be utilized:

A. Purchase order. A purchase order is issued for any requisitioned items, either separately or in conjunction with a contract. A purchase order is used to authorize a vendor to proceed with the purchase of goods, services and/or construction as specified, and obligated the county for payment. The purchase order is used in support of other contracts or by itself to establish legal financial obligations. A purchase order may result from any type of procurement. A purchase order shall be issued upon receipt of an acceptable, authorized requisition, after having justification, proper procurement as per the thresholds set forth in Table 1 and after confirming the availability of funding. A purchase order is issued only after a requisition has been completed and approved. The purchase order must be written so that all pertinent information is clear, concise and complete therefore preventing any unnecessary misunderstandings with the vendor.

B. Contract (written contract). A written contract, as described below, is used when engaging in construction, purchasing of goods and/or services where a purchase order is not adequate to describe all the terms and conditions, and is required to be executed by both parties. A purchase order, as described above, may be used as backup to a contract and processed as encumbrance of funds. The OMB Director, Risk Manager, County Attorney, County Administrator, and/or Board must approve the written contract where applicable per this Purchasing Manual. A contract refers to a written document, between the supplier, contractor, and/or vendor and Okaloosa County. This document establishes the legal working relationship between the two parties. It specifies everything that is to be provided: what, when, where, how much, how many, what size, what color, how delivered, where delivered, etc. It specifies how and when payments of goods and services are to be made, maintenance terms, guaranties, etc. The contract establishes in advance the ground rules of the terms and conditions.

C. Change order or contract amendment. A change order or contract amendment is processed whenever a change to the original agreement is necessary. Change orders or contract amendments are completed for modifications to scope, descriptions, unit cost, quantities, completion times etc. Change orders and contract amendments must be executed by the authorized individual pursuant to the Table 1 who approved and executed the original purchase order or contract, unless it is a construction contract as further detailed in subsection D below or unless the change order or contract amendment increases the total dollar amount to such a level that in accordance with Table 1, it shifts to another authorized individual/entity (the approval authority). In such instances the change order or contract amendment may be approved and executed by the new authorized individual/entity pursuant to Table 1. Change orders and contract amendments shall not be used to avoid any standard purchasing procedure for procurement by the competitive procedures. The change order and contract amendment must be clearly and concisely defined with justification provided as to why the change is being requested.

D. For purposes of construction contracts, It shall not be required to have a change order executed by the individual who approved the original purchase order or contract if such change order includes changes in the Work not involving an adjustment to the Contract Amount or an extension to the Contract Time that would cumulatively exceed ten percent (10%) of the Contract amount or the Original Contract Time. Such changes shall be effective once executed by the individual authorized pursuant to Table 1.

E. Task orders. A task order is processed whenever there exists new work to be assigned under an existing contract previously approved; many times these involve consultant and engineering contracts. All task orders require a written request which has been reviewed and signed signifying approval by the issuing department's director and the contractor/vendor. Approval shall be pursuant to the threshold level for authorization and requires contract coordination where any terms and conditions differentiate from those set forth in the original contract. All task orders must contain a clearly defined and detailed scope of work must not exceed the terms and conditions of the approved contract, unless otherwise approved by the Board.

F. All contracts shall be in a form approved by the County Attorney's office.

SECTION 34 - PURCHASE ORDERS GENERAL

A. A purchase order is prepared for any requisitioned items, regardless as to whether or not a contract is also involved, with the exception of the Purchasing Card purchases and those purchases defined as direct pay.

B. A completed purchase order shall be sent electronically to the Finance Department.

C. The Purchasing Division has the responsibility to review the purchase order and shall determine that the expenditure serves a public purpose, that the necessary approvals and procedures for the expenditure have been complied with and that the issuing Department has certified that funds are available for the purchase. The funds are encumbered and obligated at this point in the purchasing process. The Finance Department shall forward the certified purchase order to the Purchasing Division.

D. The Purchasing Division shall distribute copies of the certified purchase order as follows:

1. Original Copy

- a. Send original to the vendor, send a copy to the issuing Department to be used as a "Receiving Report."

2. Copies

- a. Shall be retained by the Purchasing Division (as a file copy) and sent to the issuing Department (as a reference/file copy).
- b. When all materials are received, the Department Director or designee shall

sign and return the Receiving Report to the Finance Department to authorize payment.

E. Purchase orders may be amended to reflect any changes that may have been necessary during delivery of a commodity, supply or service. The increase/decrease shall be approved based on the thresholds defined in Table 1. The original Purchase Order will be returned to Finance to be replaced with the Amended Purchase Order.

SECTION 35 - CONTRACTS GENERAL

A. When reasonably feasible, contracts will be drafted in a format established by the Purchasing Division in conjunction with the County Attorney's Office. Contracts will be initially drafted prior to advertisement of the procurement and attached as part of the procurement packet.

B. It is the responsibility of the issuing Departments to submit the following information to the Purchasing Division:

1. The scope (including, but not limited to, technical details, and projected compensation amounts);
2. The proposed term of the contract; and
3. If any, the proposed renewal term of the contract.

C. Once in receipt of the required information, the Purchasing Division shall draft a proposed contract, in an approved form, to be submitted as part of the procurement.

D. Once procurement has been awarded, any necessary changes to the proposed contract shall be made by the Purchasing Division in coordination with the issuing Department during the contract negotiation process. Once the contract is in final draft form, the Purchasing Division shall coordinate with the County Attorney's Office and Risk Management Department for review and approval of the contract. No contract shall be signed by the vendor prior to contract coordination approval.

E. The Purchasing Division shall establish a central repository of all county contracts, leases, and non-grant agreements in the Purchasing Division.

F. It shall be the responsibility of the individual departments to assign a department monitor for each of the department's agreements, and serve as point-of-contact throughout the term of the agreement. Administration of the agreement rests with the issuing Department.

SECTION 35.1 - CONTINUING CONTRACTS

A. All continuing contracts shall clearly set forth a defined term and such term may not exceed five (5) years plus a ninety (90) day extension period if allowed by contract to allow for completion of services or re-bid process. Contract terms exceeding the aforementioned term require Board approval. Contracts utilizing FTA funding shall not exceed five (5) years.

B. All continuing contracts shall clearly set forth a total maximum contract value. Such maximum value may be exceeded to allow for completion of a project or re-bid process if approved through an amendment process.

SECTION 36 - DUTIES AND RESPONSIBILITIES ASSIGNED FOR CONTRACTS

36.1 Purchasing Division Responsibilities

1. Maintain a central repository of all county contracts, leases and non-grant agreements.
2. Assign a unique contract/lease control number; refer to Contract Control Number form in Form Appendices.
3. Create and maintain a file of approved agreements in contract/lease control number sequence. This information will be available on-line to the public and departments.
4. Prepare and file Contract, Lease, and Agreement Control Form. Conduct periodic reviews to maintain accuracy.
5. Establish and update agreements in the Contracts/Lease database.
6. File all related correspondence in the repository file with copies forwarded to the Clerk's Records Office and department monitor.
7. Assist county issuing departments in the administration and maintenance of agreements.
8. Coordinate contract/lease agreement through the departmental review process and actively pursue timely corrections as required.
9. Review all Board agendas and minutes to determine repository action (if appropriate).
10. Generate, as necessary, correspondence and inquiries required to maintain the integrity of the Repository. Issuing department monitors will be initial points of contact.
11. Review repository lease and agreement insurance certificates to ensure valid policy effective dates. If expired, request in writing, a department monitor to contact contractor/lessee to obtain a current compliant Certificate of Insurance from the contractor or lessee.
12. Close out agreement in database upon notification of approved final payment.
13. Participate, as required, in audits and the resolution of issues raised in those audits.
14. Maintain an automated computer insurance certificate database in Contract Number Order.

15. Maintain close liaison with the Clerk's Records Office to ensure the integrity of the original files and the repository.
16. Responsible for recording Performance/Payments Bonds and Notice of Commencement with the Clerk of Court and making distribution upon completion.
17. Responsible for coordinating and reviewing the final contract payment and closeout documents prior to Board approval. Closeout documents will be forwarded to the Finance Department for financial review and submission to the County Administrator for inclusion in the Board Agenda (if approval threshold requires).
18. Attend Pre-bid conference.
19. Responsible for coordinating and reviewing all task orders assigned by departments to existing contracts.

36.2 Issuing Department Responsibilities

1. Ensure agreements, amendments and change orders are properly authorized by the Board, County Administrator or OMB Director using the appropriate authorizing thresholds and forms provided herein.
2. Assign a department monitor for each department-initiated agreement to serve as point-of-contact throughout the term of the agreement.
3. Administration of the agreement rests with the issuing County Department.
4. Serve as liaison with the contractor or lessee or subrecipient.
5. Point of contact for all agreement questions, concerns and initial correspondence.
6. Assure that standard contract/lease insurance terminology is included in agreement and any other requirements noted by the Risk Manager, if applicable.
7. Ensure appropriate administrative controls and monitoring procedures are in place to oversee agreement compliance. Periodic inspections shall be conducted as an integral part of the monitoring procedures.
8. Attend meetings as applicable with contractor or lessee, such as pre-construction conference, progress meetings, job conferences and other related agreement meetings.
9. Review progress schedule. Conduct on-site observations of the work/service.
10. Maintain a log as applicable, recording contractor hours on the job site, weather conditions, data relative to questions of work directive changes and change orders.
11. Monitor contractor completion of work in accordance with the agreement for the price found in the bid prior to certifying invoices for payment.

12. Review contractor change orders, if allowable, forward to Department Director for approval and submission to the Board, County Administrator or OMB Director or their designee for approval pursuant to the approval authority contained in this Manual.
13. Notify Contracts & Lease Coordinator of agreement completion.
14. Liaison with Contracts & Lease Coordinator and contractor providing service/work regarding contract or lease performance, operational requirements and monitoring as applicable
15. Ensure project is conducted in accordance with the approved agreement.
16. Provide, as required, supporting agreement documentation to Contracts & Lease Coordinator for inclusion into the repository file and originals to Clerk's Records Office.

36.4 County Attorney Responsibilities

Review all contracts, leases and agreements for legal sufficiency and to assure that the County is in compliance with Federal, State, and local rules and regulations.

36.5 Risk Management Responsibilities

Review all agreements to ensure:

1. Agreements incorporate the necessary insurance and bonding requirements.
2. Purchased insurance and bonding policies provide the nature and scope of coverage intended.
3. If specific coverage is unavailable, the Risk Manager may approve alternate policy or assurances.
4. If discrepancies exist, Risk Manager will resolve discrepancies with Department Monitor.

SECTION 37 - CLOSE OUT OF CONTRACT PROCEDURES

Upon project completion, the issuing Department must review the contract closeout requirements. Submission of the closeout "package" must be forwarded to the Purchasing Manager prior to approval. The package will consist of:

1. Final Invoice;
2. Completed Contract Payment Form Marked "Final";
3. Required Closeout documents as specified in the contract; and
4. Posting on Intent to Award to the Board of County Commissioners as outlined in Section 14.07 (D).

PART 4 – BONDS AND INSURANCE

SECTION 38 - BID BONDS

A. All bidders are required to submit a bid bond (when deemed by the OMB Director to be in the best interest of the County) in the form of a cashier's, certified check or paper Bid Bond in the amount of 5% of their total bid.

B. The bid bond shall be attached to the bid submittal.

C. Unsuccessful bidders shall be entitled to full return of their bid bond.

D. Upon determination by the Board, the successful bidder shall forfeit its bid bond or a portion thereof, upon failure to enter into a contract or failure to act on the purchase order issued after the bid award date.

E. The release of any bid bond shall be determined by the OMB Director.

SECTION 39 - PAYMENT AND PERFORMANCE BONDS

A. When a construction project is less than Two Hundred Thousand dollars (\$200,000), the County may require a payment and performance bond.

B. When a construction project is Two Hundred Thousand dollars (\$200,000) or more (\$100,000 or more for FTA/federally funded procurements), a payment and performance bond shall be required. The conditions of the payment and performance bonds shall be set forth in the County's standard contract. Approval of such bonds is subject to compliance with the written standards for sureties developed and approved by the OMB Director.

C. All bonds shall be written by a surety with no less than an "A" rating by a national rating agency. All sureties must be on the U.S. Department of Treasury's Listing of Approved Sureties (Department Circular 570) and bonds must be within the Treasury's underwriting limitation.

D. All bonds must be delivered to the Purchasing Division or Designee and then is submitted to the Okaloosa County Clerk of Circuit Court and recorded in official records.

SECTION 40 - INSURANCE REQUIREMENTS

A. Insurance policies for procurements shall be required as established by the Department of Risk Management.

B. All insurance policies shall be with insurers licensed in the State of Florida with a minimum Rating of A+, Class X or higher in the Bests Key Rating Guide.

C. All policies shall be written such that Okaloosa County will be notified in writing of cancellation or amendment at least 30 days prior to effective date of cancellation or amendment.

D. The certificate holder shall be Okaloosa County.

E. Contracts & Lease Coordinator shall be furnished Certificates of Insurance prior to commencement of any work or lease execution. The County shall retain the right to reject all insurance contracts that do not meet our requirements. The contract, lease or agreement will not be fully executed until all insurance requirements are met.

F. The County matches insurance requirements to the risk exposure. Consult the contract, lease or agreement for specific insurance types and limits required.

G. The County reserves the right to amend the insurance requirements upon 60-days' notice to affected third party.

H. All liability insurance shall be written on an occurrence basis only.

I. Statutory limits must be indicated for worker's compensation.

J. Contractor shall purchase and maintain in force insurance as required by and for the life of the contract, lease or agreement.

PART 5 – FEDERALLY FUNDED PROCUREMENTS

SECTION 41 - FEDERALLY FUNDED PROCUREMENTS

41.1 General, Federal Funding Procurements

A. Pursuant to 2 CFR sec. 200.110, Okaloosa County elects to use the previous procurement standards for an additional one (1) fiscal year term, effective October 1, 2017, through September 30, 2018.

B. Purchases utilizing Federal Transit Administration (FTA), Federal Emergency Management Agency (FEMA) or other Federal funds must conform to applicable Federal law, including: 2 CFR Part 1201 incorporating 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and comply with all requirements of FTA Circular C 4220.1F, as amended from time to time. Contracts utilizing Federal funds shall include all required Federal contract clauses (see Appendix 3, Exhibit L).

41.2 Solicitation Prohibitions.

Solicitation requirements may not contain features that unduly restrict competition including, but not limited to:

1. Imposing unreasonable business requirements/qualifications for bidders or offerors.
2. Imposing unnecessary experience requirements for bidders and offerors.
3. Using prequalification procedures (except in the case of qualifications based procurement for Architect/Engineer services).
4. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if the award is not for the property or services specified for delivery under the retainer contract.
5. Excessive Bonding shall not be permitted. Bid bonds and payment performance bonds shall be required for construction projects in excess of the federal small purchase threshold only.
6. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
7. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulations. In particular, 49 U.S.C. Section 5325 (i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers.
8. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies including acceptance of submission of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative

effect of apportioning work among a fixed group of bidders or offerors.

9. Taking any arbitrary action in the procurement process.

41.3 Pre-procurement

A. The Procurement Decision Matrix (Appendix 3, Exhibit A) shall be used to determine the most efficient and economical method of purchase.

B. An Independent Cost Estimate (Appendix 3, Exhibit B) is required prior to bidding for all purchases over the micro-purchase threshold and can be obtained by:

1. Design/engineering firm or in-house technical staff for construction work;
2. Published price lists or past pricing with inflation factors;
3. Independent third-party staff member not impacted by the final procurement.

C. Statement of Work Template (Appendix 3, Exhibit C) shall be completed for all piggyback purchases.

D. The Piggybacking Checklist (Appendix 3, Exhibit D) shall be completed for all piggyback purchases. Vendor shall be checked for Conflict of Interest to piggyback purchase.

E. A Sole Source Justification Form (Appendix 3, Exhibit E) and Cost Analysis (Appendix 3, Exhibit F) is required for all sole source purchases. Sole sourcing shall be allowed if:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity;
4. After solicitation of a number of sources, competition is determined inadequate.

F. A review of proposed procurements shall be conducted to avoid purchase of unnecessary or duplicative items and to ensure an economic purchase. This may include breaking out or combining purchases, or using annual contracts and performing a lease versus buy analyses to ensure the most economical approach.

G. Qualification based procurements shall be acquired in accordance with The Brooks Act, 40 U.S.C. 11, et seq.

41.4 Procurement

A. The County shall ensure that adequate competition exists by confirming that two or more responsible bidders are willing and able to compete effectively for the business.

B. A Cost Analysis (Appendix 3, Exhibit F), Price Analysis (Appendix 3, Exhibit G) and/or Fair and Reasonable Price Determination (Appendix 3, Exhibit H) shall be completed prior to purchase as well as a Procurement Summary (Appendix 3, Exhibit I). The County shall rely on

FAR Part 31, Contract Cost Principles and Procedures for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

C. Advertisement shall be once in a newspaper of general circulation in the County not later than the fourteenth day before the day set for receipt of bids.

41.5 Post-Bidding

A. Buy America pre and post-delivery audits are required for purchase of rolling stock greater than \$100,000.

B. A Responsibility Determination Form (Appendix 3, Exhibit J) and reference check form shall be completed prior to the recommendation for award in order to consider whether the bidder meets the standards of qualification. Factors to be considered shall include whether the bidder has the following:

1. The appropriate financial, material, equipment, facility, and personnel resources and expertise available or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
2. A satisfactory record of performance;
3. A satisfactory record of integrity;
4. Ability to get bonding and insurance;
5. The legal ability to contract with the County;
6. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to licenses, permits, or organization papers required.
7. Satisfactory status with the County.
8. No conflict of interest. An organizational conflict of interest exists, when any of the following occur:
 - i. Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
 - ii. A contractor's objectivity in performing the contract work is or might be otherwise impaired; or
 - iii. The contractor has an unfair competitive advantage.

41.6 Contracts

A. Contract Administration. All contracts shall include provisions adequate to form a sound and complete agreement which shall comply with Federal laws and regulations and include all required Federal contract provisions to ensure compliance with those laws and regulations

1. The Contract Administration procedures in Appendix 3 shall be followed for all federally funded contracts.
2. The Procurement History File Checklist (Appendix 3) shall be used to ensure proper contract administration including, but not limited to:

- a. The executed contract and notice of award;
- b. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- c. Contract-required insurance documentation;
- d. Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
- e. Notice to proceed;
- f. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- g. Modifications/changes to the contracts including the rationale for the change, change orders or amendments issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
- h. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
- i. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- j. Documentation relating to contract closeout.

B. The Contract Clause Matrix (Appendix 3) shall be used to determine Federally Required Contract Clauses (Appendix 3) to be included with each contract.

C. Time and Materials contracts shall only be allowed, in the following instances:

1. After determination that no other contract type is suitable,
2. The contract specifies a ceiling price that the contractor may not exceed except at its own risk.

D. Davis-Bacon prevailing wage and hour restrictions shall apply to all construction contracts exceeding \$2,000.

E. Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be allowed.

F. A change order/amendment review checklist (Appendix 3) shall be completed for all Contract Change Orders/Amendments. All out-of-scope Contract Change Orders/Amendments shall include the following:

1. An independent estimate and cost analysis prepared by the Architect/Engineer or Project Manager,
2. The contractor's proposal,
3. Meeting minutes discussing the change order and written evidence of negotiations,
4. Evidence of Board approval prior to initiation of work (if applicable),
5. Change order form signed by all parties.

Cardinal Changes (tag-ons) defined as a change which cannot be redressed within the contract

(base and option) as it was not bargained for when originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition shall not be allowed.

G. Revenue Contracts. A revenue contract is a contract in which the County or sub-recipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. The County shall provide opportunities as follows:

1. Limited Contract. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
2. Open Contract. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

The requirements for competitive selection procedures apply to all business opportunities including all revenue generating contracts. The competitive process may consist of a formal bid or proposal process and the County shall document how competitive requirements were met.

H. Options. Contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its purposes. An option to unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

41.7 Protest Procedures

A. The procedure outlined in Section 31 shall be followed. The granting agency (for example: the FTA) shall be notified in writing within seventy-two (72) hours of receipt of a protest in instances when all or part of the funding for the contract is by the granting agency. The granting agency shall be copied on all subsequent responses to the protest and appeals filed in accordance with this Section.

APPENDICES

APPENDIX 1- PURCHASING CARD POLICY

A. - PURCHASING CARD POLICY AND PROCEDURES

The Okaloosa County Purchasing Card Program is designed to improve efficiency in processing low dollar purchases from vendors accepting the Purchasing Card. This program will allow cardholders to purchase approved commodities and services directly from our vendors. The Purchasing Division and the Finance Department will monitor the performance of the program.

All questions, requests, or concerns related to this program shall be directed to:

Procurement Related - Purchasing Manager, (850) 689-5960

Accounting Related - Finance Department, Clerk of Court, (850) 689-5000

B. - ASSIGNMENT AND CONTROL OF THE PURCHASING CARD

1. Requests For and Issuance of Purchasing Cards

- a. Purchasing Cards will be issued to employees who purchase goods and services in single transaction amounts of up to \$3,500.00.
- b. The Purchasing Card will contain the employee's name, the County name, the County tax-exempt number and the individual account number.
- c. Requests for new cardholders or for changes to current cardholders must be authorized by Department Directors, using the Purchasing Card Maintenance form. Such requests shall be submitted for review to the Purchasing Card Administrator.
- d. New cardholders will be required to personally take receipt of Purchasing Cards by signing a card holder agreement. New cardholders will be given a copy of the Purchasing Card policies and procedures and a verbal review of the program. The Purchasing Division shall annually review the list of current cardholders to ensure card holder agreement forms have been received and are on file with the Purchasing Division. Refreshed training as to the use of the Purchasing Card shall be conducted when determined by the Purchasing Division to be appropriate
- e. The Purchasing Card Administrator shall notify the requesting department and the Finance Department upon issuance of any Purchasing Cards.

C. - LOST OR STOLEN PURCHASING CARDS

Cardholders must notify the Purchasing Card Administrator of any lost or stolen Purchasing

Card (see Lost or Stolen Purchasing Card Reporting Form).

D- TERMINATION OR TRANSFER OF CARDHOLDER

1. If the cardholder is no longer employed by the County, the appropriate department Purchasing Card Administrator is responsible to ensure the Purchasing Card is returned to the Purchasing Division for cancellation. (The Human Resources Department provides a resignation/termination/retirement notification to the Purchasing Division upon any employee separation from the County. This notification is utilized to ensure that the Purchasing Card has been cancelled by the department.)
2. If a department is unable to collect the Purchasing Card when an employee leaves employment with the County, the Department Director must immediately notify the Purchasing Card Administrator.
3. If a cardholder transfers to a new department, the cardholder is responsible to inform the Purchasing Card Administrator of the transfer. The cardholder is responsible to verify with the new Department Director if they are to retain the card within the new department. If they are not to retain the card, the cardholder is responsible to the Purchasing Division for cancellation.

E. PURCHASING CARD INVENTORY

The Purchasing Card Administrator shall maintain a list of Purchasing Cards issued to all county employees.

F. USE OF PURCHASING CARDS

1. The Purchasing Card may only be used by the employee whose name is embossed on the card. No other person is authorized to use the Purchasing Card (in person, online or by phone).
2. The Purchasing Card is to be used for Okaloosa County authorized purchases only. The Purchasing Card shall not be used for any personal transaction. State or Federal financial assistance purchases must be in compliance with the applicable funding source.
3. Spending Limitations
 - a. The maximum single limit/transaction for regular cardholders shall be \$3,500.00.
 - b. Each cardholder will have a monthly dollar limit to be set by the Department Director.. Limit changes must be initiated and authorized by Department Directors through the Purchasing Card Administrator.
4. Payment for purchases shall **not** be divided to circumvent the single purchase limit.
5. All items purchased must be immediately available. No back ordering is allowed.
6. Contract Services and Utilities are not allowed to be expensed with the p-card.

7. Gas and Fuel are also not allowed, unless defined in the travel or emergency p-card section.
8. Cash advances **may not** be obtained using the Purchasing Card.
9. The Purchasing Card Administrator shall block card use for certain types of goods and services. It shall be the cardholder's responsibility to become familiar with these limits and restrictions.

G. - TAX EXEMPT NUMBER

Purchasing Card purchases are exempt from all Florida state and local use tax. The County's tax-exempt ID number is printed on the face of the Purchasing Card. This number shall be given to all vendors to avoid payment of state and local use tax. **The use of the County's tax-exempt ID number for personal use is strictly prohibited.** Any employee who uses the County's tax-exempt ID number for personal use shall receive disciplinary action which may include immediate termination of employment. Additionally, F.S. 212.085 states that in addition to being liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, such person shall be liable for fine and punishment as provided by law for a conviction of a felony of the third degree, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

H. - PURCHASES

1. The cardholder must obtain the customer copy of the itemized receipt or invoice.
2. The itemized receipt or invoice shall be retained by the cardholder and attached to the Cardholder Approval form which shall be submitted to the Department Card Administrator monthly.
3. When placing a telephone or on-line order, the cardholder must confirm that the vendor will charge the Purchasing Card **only after** shipment is made.
4. The description and public purpose of the purchase shall be clearly documented on the Cardholder Approval form at the time the order posts in the system.
5. By the 15th of each month, or the first business day following the 15th of each month should it fall on a weekend or holiday, the Department Card Administrator shall forward all completed Cardholder Approval reports, including the approval of the cardholder's immediate supervisor, to the Finance Department for payment. If invoices are submitted for payment without sufficient time to make a timely payment, the interest, if any, will be charged to the department's budget.
6. Failure to comply with the guidelines for filing out the Cardholder Approval form **may** result in loss of Purchasing Card privileges.

I. - DISPUTED CHARGES

In the event there are disputed charges or a cardholder has any questions which the Purchasing Card Administrator cannot resolve, a Purchasing Dispute Form shall be completed and forwarded

to the Purchasing Division immediately.

J. - RETURNS

In the event of returns, the cardholder must check the subsequent monthly statements to ensure credit has been received and attach documentation (credit slip) when processing the monthly detail for payment. If a credit slip was not obtained, attach other documentation explaining the return.

K. - REVIEW

1. Department Director designated card representatives (“Department Card Administrators”) shall review each individual Cardholder Approval form within their department and assign departmental account numbers for billing purposes utilizing the online Purchasing Card system.
2. Each cardholder’s immediate supervisor shall review and approve the Cardholder Approval form to ensure:

NOTE: In absence of the immediate supervisor, the Department Director or Designee shall be allowed signature authority to sign the Finance reports.

- a. The goods and services obtained were necessary and appropriate;
 - b. The public purpose for the expenditure is sufficiently documented;
 - c. The date the goods or services were received is sufficiently documented;
 - d. An itemized receipt/invoice is provided;
3. Cardholder Approval forms of Department Directors shall be reviewed by the County Administrator or designee prior to being forwarded to the Finance Department for approval of payment. The County Administrator’s Cardholder Approval form shall be reviewed by the Chairman of the Board. The Board members’ Cardholder Approval forms shall be reviewed by the Clerk’s Finance Department.

L. - DISCIPLINARY ACTION – (SEE RESTRICTION OF USE GUIDELINES)

1. Unauthorized purchases shall be reported to the department director and the OMB Director.
2. When purchases are found to be unauthorized, the cardholder must provide a credit receipt proving the item(s) were returned for credit or the cardholder shall reimburse the County within thirty (30) days by submitting a personal check for the full amount of the purchase. Checks shall be sent to the Finance Department with an explanation and account number. Failure to reimburse the County within the above time period shall be authorization for deduction of the full amount of the purchase from compensation paid by the County.
3. Failure to comply with the policies and procedures herein may result in:
 - a. Revocation of Purchasing Cards from individual cardholders for a time period to be determined by the Purchasing Card Administrator.

- b. Disciplinary action, up to and including termination of employment.

M. - EMERGENCY USE

In the event of an emergency, as defined by the Emergency Purchase section of this Manual, the County Administrator may waive the Purchasing Card requirements. Under such circumstances, the following rules shall apply:

1. Approval must be received from the County Administrator.
2. The individual \$3,500.00 limit per item/purchase is temporarily lifted.
4. The cardholder shall be limited only by their pre-established monthly limit.

The County Administrator shall inform the Chairman in writing if the Purchasing Card requirements have been waived. The Board shall be notified at the next meeting.

N. - TRAVEL

Purchasing Cards may be used for pre-approved travel expenses, which shall include:

1. Hotel/motel reservations and payments.
2. Flight reservations.
3. Flight Travel payment.
4. Rental car use, taxi, shuttle and ride-share services.

Note (1): There is no single transaction dollar limit on travel. However, all travel expenses/reservations must comply with the County Travel Policy and are subject to review and disciplinary action.

Note (2): All travel (to include the above) over \$100.00 must be approved by the County Administrator or designee prior to making arrangements. All travel vouchers will be audited to confirm travel was approved prior to purchasing card transaction date. Failure to adhere to pre-approval requirements may result in suspension of card privileges.

Purchasing Cards **may not be used** for travel meals or travel gas (except for rental car use) and/or as otherwise authorized for certain promotional activities.

O. - TOURIST DEVELOPMENT DEPARTMENT (TDD)

TDD staff may use Purchasing Cards for purchases of goods and services that are authorized by Florida Statutes and by the Operations and Procedures Manual of the Tourist Development Department for the purpose of tourism promotion. All such purchases will be reviewed by the Department Card Administrator for compliance with all other Purchasing Card policy requirements.

P. - RESTRICTION OF USE GUIDELINES

The following shall be used as a guideline for all cardholders to identify the types of infractions and resulting penalties. In the event of an infraction, the PCard Administrator shall notify the affected cardholder of any infraction. In addition, disciplinary action may be taken in accordance with guidelines set forth in the Human Resources Policy Manual.

Note: This is a guideline. Repeat infractions by the same cardholder may result in greater restrictions and/or disciplinary action.

The Purchasing Manager and/or OMB Director shall have the authority to deviate from penalty guidelines in any situation where an employee can show he or she immediately corrected a mistake or has reasonable documentation proving a diligent effort is being made to correct a mistake made by the vendor or the employee.

Violations (Infractions) include: sales tax, missing receipt(s), missing Works report(s), unmatched receipt to transaction amount, delayed submission, split purchase, personal expense, improper immediate supervisor signature, missing public purpose, missing budget account, missing pre-approval travel request, missing uniform approved by HR, gas charges, others as noted:

Offenses are for the same violation within same fiscal year (County FY Oct 1-Sept 30)

1st offense = written notice to cardholder and reviewer

2nd offense = written notice to cardholder, reviewer and immediate supervisor

3rd offense = written notice to cardholder, immediate supervisor and Dept. Head, includes Remedial P-Card training

4th offense = written notice of 30 day suspension and Remedial P-Card training prior to re-activation of card.

2. Appeal Process - An employee, or department representative on behalf of an employee, may appeal any penalty by submitting a written appeal within 5 days of penalty imposition to the OMB Director with appropriate documentation. The OMB Director shall forward the appeal along with supporting documentation of the Purchasing Card infraction to the County Administrator or designee who shall have the final authority to determine the appropriate action.
3. Additional Training – The OMB Director may (at his/her discretion) require a County employee to attend a refresher Purchasing Card training session if the employee makes repeated errors/violations within a 12 month period.

APPENDIX 2 – DIRECT PURCHASE PROCEDURES

I. GENERAL

Pursuant to Florida Statutes, Section 212.08(6), and Florida Administrative Code, Number 12A-1.094, Okaloosa County is exempt from Florida Sales Tax for the purchase of construction materials, supplies and/or equipment incorporated into a construction project. Under this program, only the Florida Sales Tax rate shall apply.

The Owner has elected to exercise this right to direct purchase selected materials on all construction projects and such direct purchase shall be without any additional cost to the Owner. All bids are to be submitted with all applicable taxes included. See project plans and specifications for complete details and information.

The Contractor shall assume all risk and remain fully responsible for all material incorporated into any project, directly purchased by the Owner or not. This will include, but not be limited to, insurance, theft, storage, damage during installation, coordination, quantities ordered, submittals, protection, scheduling, shipping, security, expediting, receiving, installation, cleaning and all applicable warranties, etc.

The procedures outlined here may change at any time without prior notice to Contractor.

II. TERMS

For the purpose of this Appendix, the following terms will be defined:

a. Change Order (CO): A written order authorizing a change in the scope of work, contract amount or contract time.

b. Contractor: A General Contractor (GC) or Construction Manager (CM).

c. Okaloosa County: the County or Owner.

d. Direct Material Purchase (DMP): A purchase made directly by the Owner from a vendor, and not through a contractor.

e. Direct Purchase Purchase-Order (DPPO): A purchase order issued by the Owner directly to the Contractor's vendor for the purchase of materials exempt from sales tax.

f. Direct Purchase Procedures (DPP): Guidelines outlined in this document.

g. Facilities: Department under the County that is contract manager for the project.

h. Material: Any material, supplies, or equipment incorporated into a County construction project.

i. Purchase Requisition (PR): A request to purchase stated material or services for a quoted price.

j. Purchase Order (PO): A written authorization issued by the Owner for a vendor to deliver material or services at a specified price, which becomes a legally binding contract upon acceptance by the vendor.

k. Vendor: A company supplying material to the Project, whether such provision includes installation or not.

l. Vendor Requisition Form (VRF): A list of material and price quotes provided by the Contractor to the Owner for issuance of a Direct Purchase Purchase-Order (DPPO) by the Owner.

m. Vendor List: A list provided by the Contractor of the vendors the Owner will direct purchase material from.

Summary of Steps for Direct Purchase of Material

1. Contract Awarded.
2. Contract Signed.
3. Purchase Order issued to Contractor for full amount of contract.
4. Schedule of Values reviewed by the County and selected items identified for Direct Purchase.
5. Contractor will submit a Vendor List to Owner of only the Vendors that the County will purchase from.
6. Contractor will submit a Vendor Requisition Form (VRF) and required support documents to Owner. Florida Sales Tax rate of 6% shall apply. VRF must include quote from Vendor.
7. Change Order is issued to reduce Contractor's PO in the amount of direct materials purchased.
8. Contractor's PO is reduced for amount of Direct Purchase Change Order.
9. Issuance of Direct Purchase Purchase-Order (DPPO) to Vendor for Direct Purchase as outlined in the Change Order.
10. The County issues a Letter to Vendor, Contractor and Subcontractor confirming DPPO for direct purchase material.
11. Contractor coordinates delivery with Vendor.
12. Material is delivered and Vendor sends invoice DIRECTLY to Owner.

13. Upon receipt, Owner records invoice and forwards to Contractor for approval.
14. Contractor approves invoice, returns to Owner (within 5 days).
15. Owner issues check to Vendor in payment for materials delivered.
16. Purchase orders are closed, and tax savings reverts to Owner.

III. INSTRUCTIONS

A. Overview

1. The Owner (Okaloosa County) is exempt from sales tax on the purchase of construction materials, supplies and/or equipment incorporated into a construction project. The Owner has elected to exercise this right to direct purchase selected materials on all construction projects and such direct purchase shall be without any additional cost to the Owner. All bids are to be submitted with all applicable taxes included.

2. The Owner shall, via Direct Purchase Purchase-Order (DPPO), purchase material and the Contractor shall assist the Owner in the preparation of the DPPO. The Owner will purchase the material from Vendors selected by the Contractor for the price originally negotiated by the Contractor.

3. The Contractor's PO and contract amount shall be reduced by the amount of the DPPO plus Florida State Sales Tax. This reduction in the Contractor's PO and contract amount will occur through a Change Order (CO), which will reference the Contractor's PO affected by the change.

4. Issuance of DPPO's by the Owner shall not relieve the Contractor of any contract responsibilities for any material purchased and incorporated into a construction project, directly purchased by the Owner or not, with the exception of the payments for the material or equipment purchased via DPPO.

5. The Contractor shall remain fully responsible for: insurance, theft, storage, damage during installation, coordination, quantities ordered, submittals, protection, scheduling, shipping, security, expediting, receiving, installation, cleaning and all applicable warranties, etc. The Contractor must maintain the Builder's Risk policy to include ALL material and equipment stored on-site and installed on-site.

6. It is recognized that the Contractor may encounter additional overhead costs in assisting the Owner with its Direct Purchase Program. The Contractor is charged with including all additional costs as part of the Bid or Proposal.

7. No payment will be made for material or equipment stored off-site.

8. All invoices must contain the Owner's DPPO number in order to be accepted and processed

for payment.

B. Vendor List

1. Upon contract award of the construction project, the Owner will review the schedule of values with Contractor and determine which items the Owner will direct purchase.
2. Contractor will submit a Vendor List to Owner of only the Vendors that the County will purchase from.

C. Purchase Order Request - Vendor Requisition Form

1. When the materials to be direct purchased have been determined, the Contractor shall issue a Vendor Requisition Form (VRF) addressed to the Owner. The VRF shall contain the following minimum information and be submitted at least 20 days prior to shipment of material.

- a. Date of VRF
- b. Project name, number and location
- c. Contractor contact information
- d. Subcontractor contact information
- e. Vendor's full business name, address, complete contact numbers - telephone, fax, e-mail, etc.
- f. Any special instruction; for delivery and contact person
- g. Quantity of each material
- h. Description of all material including item and/or serial number
- i. Unit cost of each material
- j. Extended price of each material (quantity times unit cost)
- k. Sales tax on material to be purchased. Florida Sales Tax rate of 6% shall apply.
- l. Shipping - The VRF and the quote must indicate FOB Destination or Job Site. The Owner will not pay shipping and handling charges.
- m. Total price for all material ordered (extended prices plus sales tax)
- n. Copy of detailed quote from Vendor indicating same information including sales tax amount
- o. Signature and printed name of Contractor
- p. Signature of the County Project Manager

2. All VRF's may be submitted at the same time.

3. All VRF's should be sent by E-mail to the designated County employee.

D. Change Order Request

1. At the same time the VRF is requested, a Change Order must be submitted/executed for reduction of the Contractor's PO and issuance of the DPPO. For this CO, the following documents are required:

- a. Three (3) completed and approved original CO's
- b. Complete description of proposed change
- c. The CO must indicate the amount of tax savings
- d. List all VRF requested

E. Issuance of Purchase Order

1. The Owner will issue a DPPO in the amount of the VRF less sales tax. The DPPO will contain the following minimum information:

- a. Date of DPPO;
- b. Project name, number and location;
- c. Vendor's full business name and address;
- d. Special instruction for delivery and contact person;
- e. The authorized quantity, material description, unit cost, and extended price for each material;
- f. Total price for material ordered.

2. The Owner will send the DPPO to the Vendor, with a copy retained by the Owner, and copies sent to the Contractor and subcontractor.

3. Upon receipt of the DPPO by the Vendor, the Vendor and Contractor shall coordinate and schedule delivery of the material to the job site.

4. After delivery, the Vendor must issue and deliver the invoice directly to the Owner. The invoice must clearly reference the Owner's DPPO number.

5. All material is to be delivered to the job site, where the Contractor assumes all responsibility and risk.

F. Invoice Approval and Payment

1. Upon receipt of the Vendor's invoice by the Owner, the Owner will fax a copy to the Contractor for verification and approval. The Contractor will have five (5) working days to process the invoice for payment. Once approved by the Contractor and Owner, the Vendor's invoice will be paid.

2. The Owner will issue payment to Vendor in the amount approved by the Owner and Contractor. The amount paid to the Vendor will not exceed the amount of the DPPO. In order to maintain timely payments, it will be the responsibility of the Contractor to process invoices in accordance with the payment schedule. The Contractor shall pay any late fees incurred as a result of the Contractor's failure to process invoices in a timely manner.

G. Contractor's Pay Request

1. The Contractor shall be responsible for maintaining details of direct material purchased and tax savings on the AIA Form G702, Application and Certificate for Payment, in the project. The material direct purchased by the Owner and the resulting sales tax savings must appear on each

pay request along with all other CO's.

2. The Contractor's pay request:

- a. Must have Direct Material Purchases (DMP) deducted from pay request.
- b. Must show all CO's and DPPO's (complete details).
- c. Facilities will reconcile pay request with their records:
 - 1) Contractor will be contacted to resolve any discrepancies.
 - 2) Owner will fax summary as transactions occur.

H. End of Process

- 1. All DPPO's have been issued, materials delivered, invoices approved and paid.
- 2. Facilities will close all DPPO; no CO is required for this action.
- 3. Any discounts for prompt payment are for the account of the Owner.

APPENDIX 3 – FEDERAL PROCUREMENT FORMS AND MATERIALS

ATTACHMENT 3, EXHIBIT A: Procurement Decision Matrix

ATTACHMENT 3, EXHIBIT B: Independent Cost Estimate

ATTACHMENT 3, EXHIBIT C: Statement of Work (SOW) Template

ATTACHMENT 3, EXHIBIT D: Piggybacking Checklist

ATTACHMENT 3, EXHIBIT E: Sole Source Justification Form

ATTACHMENT 3, EXHIBIT F: Cost Analysis Form

ATTACHMENT 3, EXHIBIT G: Price Analysis

ATTACHMENT 3, EXHIBIT H: Fair and Reasonable Price Determination

ATTACHMENT 3, EXHIBIT I: Procurement Summary

ATTACHMENT 3, EXHIBIT J: Responsibility Determination Form

ATTACHMENT 3, EXHIBIT K: Contract Clause Matrix

ATTACHMENT 3, EXHIBIT L: Federally Required Contract Clauses

ATTACHMENT 3, EXHIBIT M: Change Order Review Checklist

ATTACHMENT 3, EXHIBIT N: Procurement History File Checklist

ATTACHMENT 3, EXHIBIT O: Procurement File Checklist

ATTACHMENT 3, EXHIBIT P: Contract Administration

ATTACHMENT 3, EXHIBIT Q: 2 CFR §200.236 & 2 CFR Part 200 Appendix II

ATTACHMENT 3, EXHIBIT R: FEMA Checklist for Reviewing Procurements

EXHIBIT A: PROCUREMENT DECISION MATRIX

Micro-purchase

Amount < \$3,500

Multiple Sources

Competitive Procurement

Amount > \$3,500

Not an Emergency

Sole Source

Approved by FTA

OEM, Custom Item **OR**

Only One Source **OR**

Lease vs Buy Analysis (attach if applicable)

--

Competition Inadequate after Solicitation **OR**

Emergency/Public Exigency

Small Purchase

Amount < \$150,000

Complete and Adequate Specification or Description

Two or more quotes available

Sealed Bid (IFBs)

Complete and Adequate Specification or Description

Two or more responsible bidders willing to compete

Selection can be made on the basis of price alone

Firm Fixed Price Contract

No discussion with bidders required after receipt of bids

Construction – design-bid-build (design-build shall not be permitted)

Type of Contract

Fixed price

Firm fixed unit prices

Cost plus fixed fee

Time and materials

Blanket purchase order

Indefinite Delivery Indefinite Quantity (IDIQ)

Competitive Proposals (RFPs)

Complete Specifications Not Feasible

Bidder Input Needed

Two or more responsible bidders willing to compete

Discussion needed with bidders after proposals

Fixed price can be set after discussions

EXHIBIT B: INDEPENDENT COST ESTIMATE

Contract Type:

Date of Estimate:

Description of Goods / Service:

Method of Obtaining the Estimate:

I have obtained the following estimate from....

- Published Price List / Past pricing (date)_____
- Engineering or technical estimate
- Independent Third Party estimate
- Other (specify)_____

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be: \$_____. Details are shown below.

Cost of Standard Items

A

Product	Cost (\$/ea)	Cost (\$/ea)	Notes / Data Source
	Delivered	No Freight	

Cost of Services, Repairs, or Non-Standard Items

B

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated overhead	SG&A	Profit	Total

Signature of Preparer:

The preceding cost estimate was obtained or prepared by: _____

[For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.]

EXHIBIT C: SOW TEMPLATE

Statement of Work Title: [Type text]

1.0 Project Background

- Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought.
- Short statement of the problem to be resolved
- Expected project duration
- Transit Agency organizational units and/or key individuals involved in managing the project
- Alternative solutions or implementation strategies evaluated

a) Transit Agency requires these products and/or services due to:

b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:

c) The completion of this work will help Transit Agency:

Statement of Work Title: [Type text]

1.0 Project Background

Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought.

Short statement of the problem to be resolved

Expected project duration

Transit Agency organizational units and/or key individuals involved in managing the project

Alternative solutions or implementation strategies evaluated

a) Transit Agency requires these products and/or services due to:

b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:

c) The completion of this work will help Transit Agency:

2.1 Results

Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.

2.2 Anticipated Benefits

Describe what the organization will gain through completion of this project.

2.3 Business Processes Impacted

Review major changes in the way work will be conducted once the project is complete (if any).

2.4 Customers / End Users Impacted

Identify the specific individuals or groups whose work will be most affected during and after the project's execution.

3.0 Applicable Documents

List legal, regulatory, policy, security, and similar relevant documents. Include publication number, title, version, date and where the document can be obtained. If only certain portions of documents apply, state this. Indicate the definition of terms, if needed.

List any publications, manuals, and regulations that the supplier / contractor must abide by:

a) [Type text]

b) [Type text]

c) [Type text]

Definitions and Acronyms:

4.0 Summary of Requirements

These are the key tasks expected of the supplier / contractor according to the Schedule and the Statement of Work.

List the key technical and functional requirements for the project. Highlight up to 20 requirements that you consider to be essential to the ultimate success of the project. Include the expected outputs / outcomes and performance standards.

Write tasks to be performed in a logical and sequential arrangement of work to the extent possible. Describe the tasks in terms of outcomes expected, such as response time, cleanliness level, equipment up-time and functionality. Use “work” words, such as:

- 1) Review...
- 2) Analyze...
- 3) Repair...
- 4) Install...
- 5) Construct...

All tasks should have quantifiable or observable results.

5.0 Schedule and Deliverables

List all outputs / outcomes and submittals with specific due dates or time frames. Include type, quantity and delivery point (s). Include the acceptance criteria for each.

Milestone or Major Project Deliverable	Planned Completion Date

6.0 Quality Assurance Plan

Explain what the Transit Agency’s quality expectations are, how (and how often) deliverables or services will be monitored and evaluated, and the process to follow when the outputs / outcomes are below performance standards.

The following levels of quality are to be judged acceptable under this contract:

a) All milestones or services will be achieved and all reports will be submitted on time in accordance with Section 5.0 of this SOW.

a) All milestones, services, products or reports will meet the outcomes noted in Section 4.0 of this document.

c) Supplier / Contractor work will be monitored by Transit Agency project and Contract Management Staff.

d) Specific quality requirements for this contract are as follows:

1) On time delivery= [Type text]

2) Acceptable quality = [Type text]

3) Responsiveness = [Type text]

4) Service Level = [Type text]

EXHIBIT D: PIGGYBACKING CHECKLIST

Definition: *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.* ("FTA Dear Colleague" letter, October 1, 1998).

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14) (i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See BPPM Section 9.2.1.		
13. Were geographical preferences included in the original solicitation/contract?		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3—*Joint Procurements of Rolling Stock and "Piggybacking,"*

EXHIBIT E
SOLE SOURCE PURCHASE FORM

A sole source is when the commodity or service can be legally purchased from only one source. This is usually due to the source owning patents and/or copyrights. A requirements for a particular proprietary item does not justify a sole source purchase, if, there is more than one potential supplier for that item. Use of Brand Names and Model numbers does not constitute a sole source.

Date: _____ **PR No.:** _____ **Requestor:** _____ **Phone No.:** _____

Department/Division: _____

Item Description: _____

Vendor: _____

Vendor's Address: _____

Vendor's Telephone No.: _____ **Point of Contact:** _____

Sole Source Justification: (Please attach justification) _____

Check One:

___ The item is available only from one vendor (sole source justification is attached).

___ Federal Awarding Agency or Pass-Through Agency authorizes noncompetitive negotiations (letter of authorization is attached).

Requesting Department Director Signature
(Or Designee)

Date

REVIEW BY PURCHASING DEPARTMENT

Purchasing Department Comments: _____

Purchasing Director Signature

Date

Approved: _____

Denied: _____

EXHIBIT E (1)
SINGLE SOURCE PURCHASE FORM

A single source means that a commodity or service can be purchased from multiple sources, but, in order to meet certain functional or performance requirements (e.g. parts matching existing equipment or materials) there is only one economically feasible source for the purchase.

Date: _____ PR No.: _____ Requestor: _____ Phone No.: _____

Department/Division: _____

Item Description: _____

Vendor: _____

Vendor's Address: _____

Vendor's Telephone No.: _____ Point of Contact: _____

Single Source Justification: **(Please attach justification)** _____

Check One:

_____ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_____ Federal Awarding Agency or Pass-Through Agency authorizes noncompetitive negotiations (letter of authorization is attached).

_____ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a) (1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

_____ Other. Additional justification required.

Requesting Department Director Signature
(Or Designee)

Date

REVIEW BY PURCHASING DEPARTMENT

Purchasing Department Comments: _____

Purchasing Director Signature

Date

Approved: _____

Denied: _____

EXHIBIT F: COST ANALYSIS FORM

COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts) (See Instructions below)	
SOLICITATION #	SUPPLIES AND/OR SERVICES TO BE FURNISHED
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS						
1. DIRECT MATERIAL			Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS						
B. SUBCONTRACTED ITEMS						
C. OTHER - (1) RAW MATERIAL						
(2) STANDARD COMMERCIAL ITEMS						
<i>TOTAL DIRECT MATERIAL</i>						
2. MATERIAL OVERHEAD (RATE % x \$ BASE *)						
3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
<i>TOTAL DIRECT LABOR</i>						
4. LABOR OVERHEAD			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
OH Rate						
X BASE (labor total above)						
<i>TOTAL LABOR OVERHEAD</i>						
5. OTHER DIRECT COSTS			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
A. SPECIAL TOOLING/EQUIPMENT						
<i>TOTAL SPECIAL TOOLING/EQUIPMENT</i>						

B. TRAVEL				
(1) TRANSPORTATION				
(2) PER DIEM OR SUBSISTENCE				
<i>TOTAL TRAVEL</i>				
DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independ ent Estimate	Varianc e
C. INDIVIDUAL CONSULTANT SERVICES				
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>				
D. OTHER				
<i>TOTAL OTHER</i>				
<i>E. SUBTOTAL DIRECT COST AND OVERHEAD</i>				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. <i>SUBTOTAL ESTIMATED COST</i>				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. <i>SUBTOTAL ESTIMATED COST</i>				
11. FEE OR PROFIT				
12. <i>TOTAL ESTIMATED COST AND FEE OR PROFIT</i>				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

FEDERAL COST PRINCIPALS

Costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the COUNTY. Chapter IV, Section 4 C4220.1F states FTA assistance may support contract costs or prices based on estimated costs only if the costs incurred or cost estimates included in negotiated prices comply with applicable Federal cost principles, and the property or services are eligible for Federal assistance under the terms of the underlying grant or cooperative agreement.

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

5. OTHER DIRECT COSTS

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip.

Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

EXHIBIT G: PRICE ANALYSIS

PO / Contract: _____

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst’s conclusions are valid.

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

____ Comparison with competing suppliers’ prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)

____ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)

____ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).

____ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

DATE: _____ PREPARED BY _____

Attachments:

EXHIBIT H: FAIR AND REASONABLE PRICE DETERMINATION

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

- Found reasonable on recent purchase.
- Obtained from current price list.
- Obtained from current catalog.
- Commercial market sales price from advertisements.
- Similar in related industry.
- Personal knowledge of item procured.
- Regulated rate (utility).
- Other.

Comments:

Copy of purchase order, quotes, catalog page, price list, etc. is attached.

Purchasing Agent

Date

EXHIBIT I: PROCUREMENT SUMMARY
PROCUREMENT MEMORANDUM

Date: _____ Completed by: _____
PO / Contract No. _____
Source of Funding: _____

Method of Procurement

Micro Purchase: _____ Competitive RFP: _____ Competitive Bid: _____
Small Purchase: _____ A&E Services: _____ Sole Source: _____

Adequate # of Sources Solicited? Yes/No and #
Justification if Non-Competitive:

Reason for the Procurement

Contract Type: _____
Rationale for contract type: _____

Reason for Contractor selection or rejection: Lowest responsive, responsible bidder: _____
Evaluation results
were: _____

Basis for Contract Price:
Accepted contractor's proposed pricing: _____
Negotiated Price (attached memorandum) _____
Other: _____

Cost / Price Analysis:
The price offered by the supplier was within _____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from \$_____
Pricing discrepancies between the offers was attributed to _____
Other sources/data used to affirm price reasonableness were _____

EXPLAIN:
Evaluation of Options, if any: _____
Exercise of Options, if any: _____

Summary of Responsibility and Responsiveness Checks

Award Date of contract award: _____
Board Approval (Attach Meeting Minutes): _____

Change Orders

Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.

EXHIBIT J: RESPONSIBILITY DETERMINATION FORM

Bid/RFP No: _____
Supplier: _____
Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
2. Ability to meet the delivery schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
4. Satisfactory record of integrity, not on debarred or suspended listings	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
5. Receipt of all necessary data from supplier	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
6. System for Award Management (SAM) check	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
7. Conflict of Interest	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____

EXHIBIT K: CONTRACT CLAUSE MATRIX

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination *	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA) *	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	

Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights**	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States
DHS Seal, Logo, Flags	All FEMA	All FEMA	All FEMA	All FEMA	All FEMA
Compliance with Federal Law, Regulation & Executive Orders	All FEMA	All FEMA	All FEMA	All FEMA	All FEMA

*APPLIES TO ALL FEMA CONTRACTS NO MATTER THE AMOUNT

** DOES NOT APPLY TO FEMA PUBLIC ASSISTANCE WORK CONTRACTS

EXHIBIT L: FEDERALLY REQUIRED CONTRACT CLAUSES

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
6. Energy Conservation Requirements
7. Clean Water Requirements
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
10. Lobbying
11. Access to Records and Reports
12. Federal Changes
13. Bonding Requirements
14. Clean Air
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
19. No Government Obligation to Third Parties
20. Program Fraud and False or Fraudulent Statements and Related Acts
21. Termination
22. Government-wide Debarment and Suspension (Nonprocurement)
23. Privacy Act
24. Civil Rights Requirements
25. Breaches and Dispute Resolution
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
28. Disadvantaged Business Enterprises (DBE)
29. [Reserved]
30. Incorporation of Federal Transit Administration (FTA) Terms
31. Drug and Alcohol Testing
32. Veteran's Preference/Employment
33. Occupational Safety and Health Act Compliance
34. Fair Labor Standards Act
35. Texting When Driving
36. E-Verify

1. FLY AMERICA REQUIREMENTS

**49 U.S.C. § 40118
41 CFR Part 301-10**

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not mandate any specified clause or language. FTA proposes the following language.

Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

**49 U.S.C. 5323(j)
49 CFR Part 661**

Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The \$100,000 threshold applies only to the grantee contract, subcontracts under that amount are subject to Buy America.

Mandatory Clause/Language

The Buy America regulation, at 49 CFR 661.13, requires notification of the Buy America requirements in FTA-funded contracts, but does not specify the language to be used. The following language has been developed by FTA.

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

Charter Service Operations - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)

49 CFR Part 605

Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. The following clause has been developed by FTA.

School Bus Operations - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The MARAD regulations at 46 CFR 381.7 contain suggested contract clauses. The following language is proffered by FTA.

Cargo Preference - Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49

CFR Part 41

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to

existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third-party contract clauses. The following language has been developed by FTA.

Seismic Safety - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. The following language has been developed by FTA:

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

Model Clause/Language

While no mandatory clause is contained in the Federal Water Pollution Control Act, as amended, the following language developed by FTA contains all the mandatory requirements:

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING
49 U.S.C. 5323(c)
49 CFR Part 665

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

**49 U.S.C. 5323
49 CFR Part 663**

Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Model Clause/Language

Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: _____

Signature: _____

Company Name: _____

Title: _____

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: _____

Signature: _____

Company Name: _____

Title: _____

10. LOBBYING
31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Mandatory Clause/Language

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

EXHIBIT A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Applicability to Contracts

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

Flow Down

FTA does not require the inclusion of these requirements in subcontracts.

Model Clause/Language

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u>	None	Those	None	None	None	None

a. Contracts below SAT (\$100,000)	None unless ¹	imposed on state pass thru to Contractor	Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000/Capital Projects	non-competitive award					
<u>II Non State Grantees</u>	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes ³					
b. Contracts above \$100,000/Capital Projects						

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES 49 CFR Part 18

Applicability to Contracts

The Federal Changes requirement applies to all contracts.

Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Model Clause/Language

No specific language is mandated. The following language has been developed by FTA.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the contract price if the contract price is not more than \$1 million;
 - (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Flow Down

Bonding requirements flow down to the first tier contractors.

Model Clauses/Language

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

Bid Bond Requirements (Construction)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient).

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to

enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

- (a) The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million;
or
 - (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

14. CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Model Clauses/Language

No specific language is required. FTA has proposed the following language.

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or

more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

Flow Down

These requirements flow down to all to all contractor and subcontractor tiers.

Model Clause/Language

No specific clause is mandated, but FTA has developed the following language.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

Clause Language

1. Davis-Bacon and Copeland Anti-Kickback Acts

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29

CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as

part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [*insert name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [*insert name of grantee*] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [*insert name of grantee*] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit

Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage

determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from ... the [Federal] Government.” 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any “contract in an amount that is not greater than \$100,000.” 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work.” These non-construction applications do not generally apply

to transit procurements because transit procurements (to include rail cars and buses) are deemed “commercial items.” 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act’s requirements are satisfied.

Clause Language

2. Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (*write in the name of the grantee*) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Model Clause/Language

While no specific language is required, FTA has developed the following language.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

These requirements have no specified language, so FTA proffers the following language.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a

project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION
49 U.S.C. Part 18
FTA Circular 4220.1E

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Model Clause/Language

FTA does not prescribe the form or content of such clauses. The following are suggestions of clauses to be used in different types of contracts:

a. Termination for Convenience (General Provision) The (Recipient) may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to (Recipient) to be paid the Contractor. If the Contractor has any property in its possession belonging to the (Recipient), the Contractor will account for the same, and dispose of it in the manner the (Recipient) directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the (Recipient) may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the (Recipient) that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the (Recipient), after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The (Recipient) in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure

the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to (Recipient)'s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from (Recipient) setting forth the nature of said breach or default, (Recipient) shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude (Recipient) from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that (Recipient) elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by (Recipient) shall not limit (Recipient)'s remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The (Recipient), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the (Recipient), protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and (Recipient) shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the (Recipient).

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the (Recipient) may terminate this contract for default. The (Recipient) shall

terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. the contractor, within [10] days from the beginning of any delay, notifies the (Recipient) in writing of the causes of delay. If in the judgment of the (Recipient), the delay is excusable, the time for completing the work shall be extended. The judgment of the (Recipient) shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The (Recipient) may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The (Recipient) shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) The (Recipient) may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the (Recipient) or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the (Recipient), or property supplied to the Contractor by the (Recipient). If the termination is for default, the (Recipient) may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value,

if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the (Recipient) and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the (Recipient), the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the (Recipient) determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the (Recipient), after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **{insert agency name}**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **{insert agency name}**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT **5 U.S.C. 552**

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Model Clause/Language

The text of the following clause has not been mandated by statute or specific regulation, but has been developed by FTA.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS **29 U.S.C. § 623, 42 U.S.C. § 2000** **42 U.S.C. § 6102, 42 U.S.C. § 12112** **42 U.S.C. § 12132, 49 U.S.C. § 5332** **29 CFR Part 1630, 41 CFR Parts 60 et seq.**

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text.

Civil Rights - The following requirements apply to the underlying contract:

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (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," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to 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, 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Model Clause/Language

The FTA patent clause is substantially similar to the text of 49 C.F.R. Part 19, Appendix A, Section 5, but the rights in data clause reflects FTA objectives. For patent rights, FTA is governed by Federal law and regulation. For data rights, the text on copyrights is insufficient to meet FTA's purposes for awarding research grants. This model clause, with larger rights as a standard, is proposed with the understanding that this standard could be modified to FTA's needs.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (*i.e.*, a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

**49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215**

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

Model Clause/Language

Since no mandatory language is specified, FTA had developed the following language:

Transit Employee Protective Provisions. (1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (*see* section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The

national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is %. A separate contract goal **[of % DBE participation has] [has not]** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (*see* 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING
49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

Drug and Alcohol Testing Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in

the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

32. VETERAN'S PREFERENCE

Chapter IV, 2.c. (1)(c) C4220.1F of FTA C 4220.1F

Contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

33. OCCUPATIONAL SAFETY AND HEALTH ACT COMPLIANCE

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

34. FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The [*contractor / consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*contractor / consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

35. TEXTING WHEN DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project.

36. E-VERIFY

Enrollment and verification requirements.

- (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall-
 - a. Enroll. Enroll as a Federal Contractor in the E-Verify Program within thirty (30) calendar days of contract award;
 - b. Verify all new employees. Within ninety (90) calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); and,
 - c. Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within ninety (90) calendar days after date of enrollment or within thirty (30) calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)
- (2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of
 - a. All new employees.
 - i. Enrolled ninety (90) calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); or
 - ii. Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within ninety (90) calendar days after date of contract award or within thirty (30) days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section.)
 - b. Enrolled less than ninety (90) calendar days. Within ninety (90) calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the contractor, who are working in the United States, whether or not assigned to the contract, within three (3) business days after the date of hire (but see paragraph (b)(3) of this section); or

- (3) If the Contractor is an institution of higher education (as defined at 20 U.S.C. 1001(a)); a State of local government or the government of a Federally recognized Indian tribe, or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements of (b)(1) or (b)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.
- (4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within one hundred eighty (180) calendar days of-
- i. Enrollment in the E-Verify program; or
 - ii. Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contract information provided in the E-Verify program Memorandum of Understanding (MOU)
- (5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.
- i. The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor, will be referred to a suspension or debarment official.
 - ii. During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.
 - iii. Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.
- Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee-

- (a) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;
- (b) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or
- (c) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12. Policy for a Common Identification Standard for Federal Employees and Contractors.

Subcontracts. The Contractor shall include the requirements of this clause, including this paragraph (appropriately modified for identification of the parties in each subcontract that-

- (1) Is for-(i) Commercial and noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or
 - (ii) Construction;
- (2) Has a value of more than \$3,500; and
- (3) Includes work performed in the United States.

EXHIBIT M: CHANGE ORDER REVIEW CHECKLIST

Date	_____		
Contract Number	_____		
Contractor	_____		
Contract Title	_____		
Reviewer	_____		
New Contract Total	_____		
Change Order Number	_____		
Dollar Value Increase	_____		
Length of Time Extension Granted	_____		
New Performance Period End Date	_____		

Change Order Checklist	INCLUDED		N/A	Comment
1. In-House Estimate Prepared				
2. Project Manager Approval				
3. AWO Scope Meeting Held				
3a. Scope of Change Adequate for Bidding				
4. Contractor Proposal Includes Impact Costs, Price				
5. Cost Analysis Conducted				
5a. If Price > 10% of ICE, Evidence of MTA President Approval				
6. Negotiation Memorandum				
7. Written Record of Change				
7a. Signed Change Order in File				
8. Evidence of Board Approval Prior Initiation of Changed Work				
9. Notice to Proceed in file				
10. Work Authorized within Contract Scope				
11. No Evidence of Arbitrary Action				
Other Comment				

EXHIBIT N: PROCUREMENT HISTORY FILE CHECKLIST

CONTRACT NUMBER _____
CONTRACTOR NAME _____
CONTRACT AWARD DATE _____
CONTRACT AMOUNT _____
CONTRACT START DATE _____

		Responsible	In File	N/A
1	Procurement Request	Transit		
	Funding/Accounting Code	Transit		
2	Independent Cost Estimate	Transit		
3	Statement of Work (spec)	Transit		
4	Procurement Plan & Timeline	Transit		
5	Single Source Justification	Transit		
6	Market Research Documents	Transit		
7	Bidders List	Purchasing		
8	Source Selection Plan & Docs	Purchasing		
9	Solicitation & Amendments	Purchasing		
10	Pre-solicitation approvals	Transit		
11	Advertising	Purchasing		
12	Pre-bid or proposal conference notes/Q&A	Purchasing		
13	Bid/proposal & solicitation amendment ack	Purchasing		
14	"no bid" letters or offerer disqualification	Purchasing		
15	Cost or price analysis	Transit		
16	Negotiation memo	Transit		
17	Source selection report & related docs	Purchasing		
18	Contractor responsibility determination	Transit		
19	Required award approvals	Transit		
20	Notice of Intent to Award	Purchasing		
21	Protests	Purchasing		
22	Signed (conformed) contract	Purchasing		
23	Contract modifications	Purchasing		
24	Option exercises & related documents	Purchasing		
25	Contract data and reports	Transit		
26	Complaint & performance reports	Transit		
27	Documentation concerning pre or post award mistakes in bid	Purchasing		
28	Invoices/Vouchers	Transit		
29	Other Correspondence	All		
30	General Contract Correspondence	All		
31	Contract Close Out	Transit		

**EXHIBIT O: PROCUREMENT FILE CHECKLIST
 OKALOOSA COUNTY BOARD OF COUNTY COMMISSIONERS
 PROCUREMENT FILE CHECKLIST**

	Completed By	Date
Decision Matrix		
ICE		
Federal Clauses		
Terms and Conditions		
Advertised		
Bid Abstract		
Cost/Price Analysis		
Responsibility Determination		
Fair & Reasonable Determination		
SAM Excluded Parties		
Conflict of Interest*		
Buy America		
Pre-Award		
Post Delivery		
Construction		
Bid Bond		
Performance & Payment Bond		

*no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.

EXHIBIT P CONTRACT ADMINISTRATION

Procedures for FTA AND OTHER FEDERAL-Specific Procurements

Cost/Price Analysis:

Responsible Staff: Procurement staff (or project manager for construction contracts)
Applicable to: ALL FTA AND OTHER FEDERAL-funded Procurements

A cost or price analysis must be performed for every procurement. The County may use the following resources as guidance in performing cost or price analysis:

- FTA’s “Best Practices Procurement Manual”
- The National Transit Institute Course, “Cost or Price Analysis and Risk Assessment”
- Pricing Guide for FTA Grantee, FTA Website:
http://www.fta.dot.gov/documents/Hotline_Price_Guide.doc
- FAR Part 31, Contract Cost Principles and Procedures 3.3.16
- 2 CFR PART 200

Cost Analysis: A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements including contract modifications or change orders.

A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost such as professional consulting and architectural and engineering services contracts). A cost analysis includes verifying the proposed cost data, the projections of the data and the evaluation of specific elements of cost and profit.

Cost Analysis for Professional, Consulting, and Architectural and Engineering Services: This method is most often used to contract for professional, consulting, and architect/engineering (A/E) services. (See 24 CFR 85.36(d)(3) for a definition). An evaluation of the reasonableness of the price is also required under Florida’s’ Consultants Competitive Negotiations Act (CCNA).

To determine the reasonableness of proposed costs, the County shall obtain cost breakdowns from the offerors showing all the elements of their proposed total costs. The overall objective should be to negotiate total prices that are fair and reasonable.

Cost Analysis for Construction and Construction Management Contracts: This includes all contracts and contract modifications negotiated based on cost for construction management or construction, alteration or repair of buildings, transit facilities, or other kinds of real property.

Construction contracts awarded using sealed bidding do not require cost analysis, but construction contracts awarded using any method other than sealed bidding, and all modifications to construction contracts require cost analysis.

Price Analysis: A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price. The County shall annotate a finding of fair and reasonable pricing and state the most common reasons why this was so, such as catalog or market price offered to the general public, regulated price, or a comparison with recent prices for similar goods and services.

Price Analysis for Micro-Purchases: for purchases of \$3,500 or less, the County will simply annotate how the County made its price fairness and reasonableness determination (e.g. professional market experience, market trend, previous purchase, and catalog price). FTA does not require the rationale for the procurement method

used, selection of contract type, required of the purchase exceeding the Micro-Purchase threshold.

Price Analysis for Sealed Bidding or Competitive Quotes: As the preferred method for contracting for supplies, equipment and construction, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. Nevertheless, the County should always compare the independent cost estimate to the low competitive bid received. In the event they are significantly different, the County will need to verify that either the estimate or the market price is valid. Otherwise, no further price or cost analysis is required under sealed bidding.

Audits and Indirect Costs: As required by 49 U.S.C. Section 5325(b)(3), all FTA AND OTHER FEDERAL assisted contracts and subcontracts including program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping or related services must be performed (i.e. a contractor cannot incur and invoice the County any unallowable, unallocable, or unreasonable costs prohibited by the FAR and/or the contract terms and conditions) and audited in accordance with FAR Part 31 cost principles.

The recipient and the third party contractor, its subcontractors and sub-recipients must accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute, and these established rates will apply for purposes of contract estimation, negotiation, administration, reporting, change order, options, and payments, not limited by administrative or de facto ceilings.

Buy America: Buy America regulations apply to FTA AND OTHER FEDERAL assisted procurements exceeding \$100,000 for iron, steel, manufactured goods, or rolling stock, Buy America regulations require the contractor to provide goods produced or manufactured in the US, unless FTA has granted a waiver authorized by those regulations.

Goods that the contractor acquires to perform its construction activities for the County, such as tools, machinery, and other equipment or facilities, is not covered by Buy America Act.

INDEPENDENT COST ESTIMATE (ICE)

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: Construction Bids funded by the FTA AND OTHER FEDERAL

Purpose

Before the County receives a bid, or a proposal that includes price, or a cost proposal either as a submittal or for negotiating a contract, contract amendment, or sole source contract, the County shall prepare an Independent Cost Estimate (ICE). The ICE is an estimate of the cost of performing the work. An Independent Cost Estimate (ICE) is required for every procurement that requires a price or cost analysis. A Micro Purchase is exempt from the ICE requirement.

Procedure

The independent cost estimate does not have to be complicated, but it should be reasonably accurate. The ICE should be broken down for each bidding schedule item. Sources of information for putting together the ICE are: prior bids or contracts for similar scopes of services; published price lists; hourly rates from similar service providers; prior bids or rates received from other agencies; and industry standards such as design as a percentage of construction. Whatever sources the County used to put its budget in place to begin with may also be used when appropriate.

The County shall develop an ICE for all purchases BEFORE the procurement process begins. The County should develop source information and cross-check that information with independent sources outside and inside the organization to evaluate its currency, accuracy, completeness, and relevancy. Disciplined cost estimating ensures that the ICE is credible, dependable, and complete, as it is used as input to the budget planning process, future procurement, and cost saving measurement.

MICRO PURCHASE PROCEDURES

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: All FTA AND OTHER FEDERAL-funded Purchases of \$3,500 or less

Purpose

To define and establish purchasing requirements for Goods or Services costing less than \$3,500 where FTA AND OTHER FEDERAL funds are involved.

Procedure

Identify Potential Vendor(s): The County is generally responsible for identification of vendors. Typical resources are catalogues, yellow books and other publications. Even for this micro dollar amount, the County departments must seek Small Businesses or DBEs. Purchasers should avoid splitting larger dollar amount purchases into micro purchases to avoid competition. Purchasers should equitably distribute repeated micro purchases among as many qualified local suppliers as is reasonable.

Method of Procurement: All Micro Purchases can be made by Purchase Order.

Documentation: Minimum documentation required is statement that the price is fair and reasonable. Purchasers must obtain a receipt or other documentation of the purchase.

Exception: The Micro purchases under \$3,500 are exempt from FTA's Required Third Party Clauses including Buy America requirements. However, Davis-Bacon Act that requires contractors to pay wages at a rate not less than the minimum wages specified in a wage determination made by the U.S. Secretary of Labor will apply to all FTA-funded construction contracts exceeding \$2,000.

SMALL PURCHASE PROCEDURES

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: All FTA AND OTHER FEDERAL-Funded Procurements between \$3,500 and \$150,000

Purpose

Small Purchase procedures are used to purchase equipment, materials, supplies, and services.

Procedure

All purchasing procedures, rules, and regulations must be followed and the County will review all quotes prior to issuance of a Purchase Order (PO) number. For purchases up to \$35,000, verbal quotes are acceptable. Small Purchases valued over \$35,000 require formal bid.

The County shall make good-faith efforts to locate DBE's and Small Businesses. The County may review a procurement request to determine if it can be fulfilled by using either an existing State contract or "piggybacking" onto another public agency contract before soliciting quotes. The County will attach the appropriate state and federal terms, conditions, forms, and certifications to the PO. Refer to Exhibit D, Piggybacking Checklist.

After quotes or proposals are received but prior to award, the County will identify the firm that provided the lowest priced responsive offer. The County will concurrently determine if the offeror is responsible and eligible for contract award.

A responsible offer for a small purchase is an offer that meets the following standards:

- Able to meet the proposed delivery or performance schedule
- Not deficient in current or recent contract performance with the County
- Has the requisite organization, experience, quality controls, technical skills or the ability to obtain them
- Has the requisite human resources, equipment and facilities or is able to obtain them for construction or public works
- Able to meet the required bonding requirements for construction or public works.
- Is qualified to receive an award under applicable state and federal laws and regulations (i.e. current business and professional licenses and permits)
- Not listed on any State and Federal lists of debarred, suspended, or ineligible firms or individual

For A&E purchases under the Small Purchase threshold, the County shall comply with the Brooks Act and the Florida CCNA by ensuring that price is NOT an evaluation factor and that only qualifications are evaluated.

The County will contact the successful firm and request applicable insurance certificates and other mandatory documents. Upon receipt of such documents, the County may issue a PO. The PO must state all applicable commercial, technical, and legal terms and conditions, including delivery and contract end dates.

Upon receipt of the products or services, the requestor inspects and accepts the deliverables, approves the invoice for payment and submits it to Accounts Payable for payment. The requestor shall notify the County if items are not received in the time and manner indicated on the PO, if the wrong items are received or any other concerns.

COMPETITIVE BIDS

Responsible Staff: Procurement staff (or project manager for construction contracts)

Applicable To: FTA AND OTHER FEDERAL-Funded Purchases in excess of the County's small purchase threshold or Construction Contracts of Any Size

Purpose

This method will be used to procure goods, services, equipment, materials, non-professional services, and construction contracts when the value of the contract is over the County's small purchase threshold. Award will be made to lowest priced bidder that submits a responsive offer and the bidder has demonstrated capacity to perform the work to be generally considered a responsible bidder. This procurement method does not permit consideration of qualitative factors in a competitive environment or negotiations with bidders. An Invitation for Bids (IFB), also called "Sealed Bids" is the solicitation method. The typical resultant contract type is a firm fixed price, fixed price variation, lump sum, or unit price.

Procedure

Preparing the IFB. The IFB must describe the requirements of the County clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for bidding.

The County submits an approved requisition, Statement of Work or Scope, and ICE to Purchasing. Depending on the complexity of the requirement, the County should collaborate with all necessary Departments and Outside Agencies at the earliest stages of requisition and scope development.

The County must develop procurement requirements such as procurement schedule; risk; insurance; subcontracting opportunities; scope and delivery schedule; bid pricing schedule; FTA-specific funding source requirements; whether a pre-bid conference is needed and other items of critical nature. A DBE goal may be established at this time.

The County drafts an IFB, including the clauses required by law or by regulation and any additional clauses expected to apply to any resulting contract including FTA clauses, prevailing wage, etc.

Advertising the IFB: The County shall prepare advertisement synopsis for The Vero Beach Press Journal and full IFB packages to publish on the DemandStar e-bid system. The County should ensure the advertisement attracts competition. The County must ensure the advertisement meets any statutory or regulatory requirements, provides adequate time for bidders to submit an offer, and provides clear instruction on how to obtain the full solicitation packet and the due date for submission of offers.

Amending the IFB: All requests for information / questions must be routed directly to the County; written clarification and addendum will be issued by the County when necessary. The County shall review and approve all clarifications and addenda prior to issuance.

If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous item of the solicitation, such changes shall be accomplished by amendment of the invitation for bids via addenda. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an addendum. Addendums shall be sent, before the time for bid opening, to everyone to whom the IFBs have been furnished. Before amending an IFB, the time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telephone. Such extension must be confirmed in the addenda.

Any information given to a prospective bidder concerning an IFB shall be furnished promptly to all other prospective bidders as an addendum to the invitation (1) if such information is necessary for bidders to submit bids or (2) if the lack of such information would be prejudicial to uninformed bidders. The information shall be furnished even though a pre-bid conference is held.

Pre-bid Conference: A pre-bid conference may be conducted, generally in a complex procurement, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It should not be used as a substitute for amending a defective or ambiguous IFB.

Submission of Bids: Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids. Bids shall be submitted so that they will be received at the location designated in the IFB and not later than the exact time set for opening of bids.

Bid Opening: Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids in accordance with the IFB instructions to be considered "responsive". Bids shall be submitted so that they will be received as designated in the IFB not later than the exact time set for opening of bids.

All bids (including modifications) received before the time set for the opening of bids shall be kept sealed and secure. Except as otherwise provided herein, bids shall not be opened or viewed, and shall remain in a safe and secured area. If an invitation for bids is cancelled, bids shall be returned unopened to the bidders. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure before bid opening.

The County shall announce when the time set for opening bids has arrived. The County shall then (1) personally

and publicly open all bids received before that time, (2) read the bids and the ICE aloud to the persons present, and (3) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required has been made and its accuracy verified.

A bid opening may be postponed when:

The County has reason to believe that the bids of an important segment of bidders have been delayed in the mail, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes); or Emergency or unanticipated events interrupt normal the County processes so that the conduct of bid opening as scheduled is impractical.

At the time of a determination to postpone a bid opening, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the IFB, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

Evaluation of Bids To be considered for award, a bid must comply with all requirements stipulated in IFB. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system. Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation.

If a single bid is received or if competition is inadequate, the County shall examine the situation to determine the reasons for the inadequate number of responses. Award may be made notwithstanding the limited number of bids. However, the County shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items. If only one bid has been received, the County has an option follow the sole source procurement procedure discussed in this Manual.

The County shall determine that a prospective contractor is responsible and that the prices offered are reasonable before awarding the contract. A price analysis shall be performed in all cases. The price analysis should reveal whether there is a significant difference in the price of the bids. In evaluating the bids for responsiveness, the County shall create an abstract of bids, verifying pricing and summarizing the Bidder's compliance with responsiveness issues and the bid prices. The project manager will check the SAM database to ensure that no bidders are listed excluded parties and a copy shall be printed for the file. Should an excluded party be identified, the project manager shall notify the chief executive officer and/or legal office and will remove said bid by an excluded party from consideration. For construction bids, the County shall verify that the Contractor was licensed by the State prior to submitting its bid.

If applicable, the County shall issue the standard bid evaluation letter to the apparent low bidder requesting material to be submitted prior to Bid Evaluation Conference.

Contract Award The County shall make a contract award by written or electronic notice within the time for acceptance specified in the bid or an extension to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the County, considering only price and the price-related factors included in the IFB.

Single Bid or Proposal. Upon receiving a single bid or proposal in response to a solicitation, the County should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. The County acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the County's control. Many unrelated factors beyond the County's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, the County's competition requirements will be fulfilled, and the procurement will qualify as a valid sole source.

If an item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced, the County must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of

such item is no higher than the price paid for such item by like customers. FTA does not permit proprietary procurements unless it meets the sole source justification criteria stipulated in FTA Circular 4220.1.F.

If spare parts, replacement parts and maintenance contracts for existing equipment and systems where only proprietary items/ services are compatible with existing equipment and systems and where such items and services can be acquired only from the manufacturer or from a single distributor or licensee and all other alternatives are exhausted, they may be acquired, ordered or paid in the best interests of the County.

The Common Grant Rules provide Federal agencies authority to permit a recipient to use noncompetitive proposals. Under this authority, FTA has made the following determinations: With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a consortium, joint venture, team, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects the County to use competition, as feasible, to select other participants in the project.

To ensure that the County has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in the Common Grant Rules, the FAR authorizes less than full and open competitive procurements in one or more of the following circumstances: To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.

Transit Service Bids The County shall use a competitive process to solicit and award a contract for the provision of transit service. Said process will include the issuance of a Request for Proposals (RFP) in coordination with the County's Purchasing Department. Contracts for transit service provision shall cover a five-year period with provisions to allow extensions for up to an additional five years. Whenever feasible, such contracts will be timed to coincide with the five year Community Transportation Coordinator (CTC) contract. The current CTC contract is effective until June 30, 2018.

PIGGYBACKING

Responsible Staff: Procurement staff, Transportation Manager

Applicable To: All FTA AND OTHER FEDERAL-Funded Procurements of equipment, materials, supplies, and services

Purpose

Establish agreements and contracts by taking advantage of existing contracts awarded by other governmental entities for goods and services that the County currently needs.

Piggybacking is defined by the FTA Circular 4220.1.F as: "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

Procedure

For FTA AND OTHER FEDERAL assisted projects, the County shall obtain a copy of the entire contract of the outside governmental entity and review it carefully to determine if it contains the provisions required by FTA Circular 4220.1F. This is an important first step, because the requirements of the Circular apply to procurements made through inter-governmental contracts and assignments. If a required Federal clause is not included in the contract, the County may add them to the County's contract.

Confirm that the original contract contains an express assignability clause that provides for the assignment of all or part of the specified deliverables. FTA's policy is that the original solicitation must contain an express notification to all bidders that an assignment would be possible under the terms of the contract. Such a notification would put the bidders on notice that they would likely be called upon to deliver all of the deliverable items, both the base as well as the option quantities. The assignment clause would thus be an important factor in the original competitive bidding. If the contract does not contain an express assignability clause, piggybacking is not permitted.

Determine that the contract is still in effect.

Determine that the specifications in the existing contract will meet the County's needs.

Review the contract terms and conditions carefully to determine that they are acceptable to the County; e.g., warranty provisions, insurance requirements, etc.

Determine that the requirements of the County will not be beyond the scope of the existing contract, creating a sole-source (noncompetitive) add-on to the contract, which will have to be justified in accordance with sole source procedures.

Verify that piggybacking quantities were included in the original solicitation.

For federally funded procurements and if the contract is an indefinite quantity contract, verify that the original solicitation and resultant contract contain both a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation. If the piggybacking action represents the exercise of an option provision in the contract, verify that the option is still valid. Options that have expired may not be exercised.

Determine that the contract was awarded competitively, either through sealed bids or through competitive proposals. If the contract was a sole-source award, the County will have to justify a sole-source award in accordance with sole-source procedures.

Verify that a cost or price analysis was performed by the original procuring agency documenting the reasonableness of the contract price and include a copy in our files. The County is not required to do a second price analysis if one was originally performed. However, the County must determine that the contract prices originally established are still fair and reasonable. Circumstances should dictate the steps to be taken. For example, if the original award was made some time ago, the County should conduct a market survey and/or perform price analysis to ensure that the prices are still fair and reasonable (even if the original award was competitive and a price analysis was performed initially). Similarly, if deliveries are to be made to a local or centralized delivery point and the original contract calls for statewide deliveries, the County should seek a price reduction.

If the contract is for federally funded rolling stock, verify that the contract term complies with the five-year term limit established by FTA Circular 4220.1F.

Determine the types of changes the County will require to be made to the deliverables. For an assignment, only "within scope" (non-cardinal) changes are allowed (e.g., seating fabrics, colors, paint schemes, signage, floor coloring, etc.).

SOLE SOURCE

<p><i>Responsible Staff: Procurement staff, Transportation Manager</i> <i>Applicable To: All procurements in excess of \$3,500</i></p>
--

Less than full and open competition is not justified based on: the County's lack of advance planning, or limited availability of Federal Assistance. When less than full and open competition is available to the County, the

County shall solicit offers from as many potential sources as is practicable under the circumstances. If the County decides to solicit an offer from only one source, the County must justify its decision adequately.

Contracts for sole source procurements shall be approved by the Board of County Commissioners. The resolution approving the contract shall also indicate the reasons for the sole source procurement.

The County shall prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

CONTRACT ADMINISTRATION

Okaloosa County is subject to review and audit by FTA and State Governments or its agents during and after contract performance and is required to comply with the standards mandated by the FTA when using Federal assistance to finance its procurements. The County is also subject to Florida Administrative code (FAC) provisions governing the County's authorizing legislation, procurement of public works and architectural and engineering services, Disadvantaged Business Enterprise and Small Business requirements, identification of subcontractors, and tax statutes regarding sales and use taxes, business and occupation taxes, and real property taxes.

This policy implements the requirements of FTA Circular 4220.1F and state laws in the interpretation of a contract. The contract administration principles, concepts and approaches discussed in the Manual shall be utilized for all contracts at The County if such procedures will achieve savings in cost, or accelerate schedule, or meet the County goals, or meet public needs, consistent with applicable FL State laws and regulations and the FTA Master Agreement.

Contract Administration System

The following documents and resources form the basis of the County's Procurement and Contract Administration System.

1. The Common Grant Rules
2. FTA Master Agreement
3. FTA Circular 4220.1F
4. Applicable Florida Statutes
5. County Procurement Manual and Administrative Policies and Procedures

Contract Administration Qualification

County employees or consultants performing any aspect of procurement or contract administration duties must demonstrate requisite skills, knowledge, and ability of having satisfactorily performed procurement and contract administration duties.

Contract Administration Tasks

Each contract will likely require different contract administration actions, collaboration and documentation activities. Simple to moderate goods and services contracts will have different specific administrative actions than construction contracts do just as lump sum contracts are managed differently than incentive or time and material or cost-reimbursement contracts.

Project Commencement

Services rendered by the Contractor shall be commenced upon written notice from the County. The Contractor shall not commence work until it has obtained all insurance and such insurance has been approved by the County's representative.

Project Duration

Project will be undertaken for a stated duration. Contract duration will be for an appropriate time length to complete the project. The duration of FTA-funded projects will not exceed five years.

Standards of Conduct

The Common Grant Rules require the County to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

As provided in the Common Grant Rules and the Federal Transit Administration Master Agreement, no County officers, employees, agents, or board members, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed have a financial or other interest in the firm selected for award.

The Board of County Commissioners established a code of ethics for board members, officers, and employees; Okaloosa County's officers, employees, agents or board members shall neither solicit nor accept gifts, entertainments, gratuities, favors, or anything of monetary value from contractors, consultants, potential contractors or consultants, or parties to sub-agreements.

To the extent permitted by the State of Florida regulations, this standard of conduct will consider appropriate penalties, sanctions, or other disciplinary action for violation of such standards by Okaloosa County officers, employees, agents, board members, or by contractors, consultants, or sub-recipients or their agents.

Change Orders

The County may execute bilateral or unilateral change orders to its contracts. Change Order administration requires that the County make an in-scope determination for the desired change work. Later a cost or price analysis must be performed to ensure that the price for the changed work is equitable, fair and reasonable.

Change Order Requirements:

1. Change order work must not be outside the original work scope; this requirement is met through sole source justification that results in a new contract.
2. A cost analysis must be performed with detailed or sufficient cost elements.
3. Profit or fee should be analyzed commensurate with work complexity, performance/contractual risk, contractor's investment, amount of subcontracting, past performance data, or market place rates.
4. Negotiations with contractors must be documented.

In addition, the following procedures will be applicable to administering and managing change management and activities related to change orders, change notice, progress payment, and approval:

Change Order Independent Cost Estimate:

Required: FTA Circular 4220 requires a cost or price analysis for every procurement action, including change orders. The starting point for the analysis is an independent cost estimate. Prior to receiving a change proposal, the County shall independently estimate the cost of performing the work. The ICE can be used as a basis of comparison for evaluating the proposed price received. A "change order" means any contract action that calls for the negotiation of a cost or price proposal arising out of a change in the contract requirements.

Change Order Cost/Price Analysis:

The Common Grant Rules require a cost/price analysis in connection with all change orders. The method and degree of cost/price analysis depends on the facts and circumstances surrounding each contract action. If the original contract contains only a lump sum price, additional cost and pricing data must be requested to perform a cost/price analysis.

The County shall perform a cost analysis when a contractor is requested to submit detailed cost elements (that is, labor hours, overhead, materials, and so forth) of the change order cost. Changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.

The County is responsible for performing cost/price analysis for all change orders.

1. The following references provide guidance in preparing cost or price analysis:
2. FTA's "Best Practices Procurement Manual," Chapter 5
3. Pricing Guide for FTA Grantees www.fta.dot.gov/documents/Helpline_Price_Guide.doc
4. FAR Part 31, Contract Cost Principles and Procedures

Termination

A Contractor may be held in default of its contractual obligation under this Agreement if the CONTRACTOR:

1. refuses or fails to supply enough properly skilled workers or proper and sufficient materials and equipment;
2. fails to make payment to subcontractor for materials or labor in accordance with the respective agreements between the CONTRACTOR and the subcontractors;
3. disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
4. performs the Work that does not conform to Contract Documents requirements;
5. fails to meet the Contract Schedule or fails to make progress on the Work so as to endanger performance of the Agreement;
6. abandons or refuses to proceed with any or all the Work; or
7. otherwise breaches, fails to comply fully with, or is in default of any provision of the Contract Documents.

If a contract of any type (fixed-price or cost-reimbursement) is contemplated for termination of convenience or for cause, a complete cost analysis must be performed to negotiate the final amount of the termination settlement.

Contracts can be terminated for the convenience of the County or for cause (also called default). Contracts are usually terminated for convenience when the County no longer has a need for the service or products as they are specified in the contract, or when it is not possible to substantiate that the contractor's performance is poor enough to terminate for cause. Contracts should be terminated for cause when the contractor fails to perform the contract as written.

Invoice and Payment

The Contract specifies the payment terms. The contractor must submit and the County must process applications for progress payment in accordance with the requirements and General and Special Conditions of the contract.

A. Advance Payments. Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic preaward authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other preaward authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

1. Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.
2. Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
 - a. Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.
 - b. Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

B. Progress Payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

1. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.
2. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
3. Percentage of Completion Method. The Common Grant Rules requires that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

The Finance Division has several stages of involvement in third party contracts and at various stages of post contract award action. A major responsibility in third party contracts is to ensure timely payments. While the County and Project personnel are responsible for recommending and approving payments, the Finance Division is responsible for issuing checks and validating funds availability.

Invoices are first received by the project manager and sent to Budget and the County Administrator for

approval. A request for payment of the invoice will then be forwarded to Finance. Once an approved invoice is received by the Finance Division, it will release payment if all documentation is in order. The County is responsible for identifying any retentions and withholdings. The Finance Division provides oversight to such retentions and withholding to ensure payment accuracy. At contract closeout, Finance Division is responsible for the final check processing.

Record Retention

The record retention requirement of three years shall commence only after the final audit and final payment is made and all other issues are resolved.

Contract Documentation

The County, in collaboration with all responsible parties, shall ensure that the history of all pre-award, post-award actions, and related project, operation, legal, and financial information are documented, collected, reviewed for compliance, maintained, distributed, archived and readily accessible to internal and external audits including the State of Florida and the FTA.

County personnel and consultants involved in and performing contract administration tasks shall prepare, maintain, and keep adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation and contract administration.

- Procurement documentation will include rationale for the method of procurement for each contract, including a sole source justification for any acquisition that does not qualify as competitive, as well as any change order deemed cardinal by the Procurement and Contracts Division.
- Contract type documentation will state the reasons for selecting the contract type used (i.e., fixed price, cost reimbursement, time and material);
- Contractor selection will include reasons for contractor selection or rejection, as well as a written responsibility determination for the successful contractor;
- Cost or Price Analysis: All procurement and change orders will evaluate and state its justification for the contract cost or price by including an ICE and cost or price analysis.
- Change Order: All change order information including essential documents, will be collected from the program/project organization, functional departments, and construction management contractors, and maintained in Live-link, and other project related information will be kept in the internal databases, readily available to internal audit and FTA. Change Orders documentation will include in-scope determination as well as a cost or price analysis to establish that the price is fair and reasonable.
- All Post-award Activities: partnering, inspection report, claims, disputes, invoice processing, and reports and forms.
- Access to Records. Apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and DOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Subcontracting

Unless otherwise specified, services assigned to subcontractors must be approved in advance by the County. The subcontractors must be qualified by the County to perform all work assigned to them. The Contractors must have written statements from the subcontractors indicating that the subcontractor is aware that all Federal Rules and Regulations apply. The County, Contractor, and subcontractors will establish procedures to verify compliance with all federal provisions by subcontractors.

Disputes, Claims, Litigation, and Settlement

The County will resolve all contractual and administrative issues including protests, disputes, and claims using good administrative practices and sound business judgment. FTA may be involved in the County's administrative decisions when the County uses federal funds to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation. For detailed FTA guidance, see FTA C 4220.1F, Page VII-1 through V-10.

The County will notify the Contractor of issues related to performance, achievement of milestones, and/or compliance with federal, state, or local regulations affecting the performance or completion of the contract as soon as those issues are identified. It is the responsibility of the Contractor to acknowledge and respond to the issue in writing upon receiving notice from the Project Manager. The Contractor should make every effort to remedy those issues as soon as practical, within up to 30 days. Should the issues remain after 30 days, the County may terminate the contract.

Finally, all agreements between the County and Contractor, including all attachments to it, constitute an agreement, that shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this agreement shall be in Okaloosa County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise. We also refer you to Chapter V, paragraph 5(a)(1) for a discussion of how liquidated damages can be used to encourage settlements.

Resolution of Claims for Breach of Contract. As a condition precedent to the filing of any legal proceedings, the parties shall endeavor to resolve claim disputes or other matters in question by mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 (fifteen) days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator, who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. The mediator's fee shall be paid in equal shares by each party to the mediator. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement. The parties expressly and specifically hereby waive all tort claims and limit their remedies to breach of Agreement as to any issue in any way connected with this Agreement.

Project Monitoring

For all contracts for Products and Materials, the County will establish deliverable dates, pre- and post- award inspection dates, and checklists of receipt of the product that will remain on file for the useful life of the product. For all Service contracts, the County will establish appropriate milestones, progress points, and measures of effectiveness (MOE) as needed to monitor the progress, adequacy, and/or completion of the

project. These measures will be established prior to commencing work and will be agreed to in writing by both parties.

Leases

Whenever any FTA-funded property, facilities, or equipment is to be leased out to a third party (including to the Senior Resource Association, the county's transit service provider), said lease shall be submitted to the FTA Region IV office for approval. No such leases shall be entered into by the County without first obtaining FTA approval. All leases will be reviewed by the County Attorney, County Community Development Director and County Purchasing Director, and will include Federal terms and conditions.

Charter Bus Reporting

Any charter service provided with federally-funded vehicles must meet the conditions of the FTA Charter Service rule, contained in U.S.C. 5323 (d). Quarterly reports on charter activity, including charter applicable exceptions, will be submitted quarterly through the Electronic Award and Management System (EAMS) process. Charter service activity has also been added as a standing agenda item to the quarterly transit meeting conducted by the County and Senior Resource Association staff.

OVERSIGHT OF SUBRECIPIENTS

The County shall ensure that all sub recipients are in compliance with federal regulations including third party procurements, if applicable. The County shall assure that each of its subrecipients complies with the applicable requirements and standards circular 4220.1F, and that each of subrecipient is aware of the Federal statutory and regulatory requirements that apply to its actions as a subrecipient. Neither a third party contractor nor a third party subcontractor is a "recipient".

Checklist for Reviewing Procurements by Federal Grant Recipients and Subrecipients

This checklist was created to assist FEMA recipients and subrecipients in complying with the federal requirements that procurements must meet in order for FEMA to reimburse eligible expenses. Importantly, this checklist is intended to provide general guidance only and does not provide a detailed explanation of the Federal procurement requirements – it is not intended to serve as legal advice and FEMA makes no guarantee that adherence to this checklist will result in full reimbursement of eligible expenses. To understand the requirements fully, the user should review the provisions of 2 C.F.R. § 200.317 – 326, which is the source of these requirements. In addition, the user may review FEMA’s Field Manual, *Public Assistance Grantee and Subgrantee Procurement Requirements*, which is available on the internet by searching for “FEMA Procurement Field Manual.” While the Field Manual was drafted to specifically address the Federal procurement standards that were in effect prior to 26 December 2014 (44 C.F.R. § 13.36(a)-(i) – States, Local and Tribal Governments; and 2 C.F.R. § 215.40-48 – Institutions of Higher Education, Hospitals, and other Non-Profit Organizations), many of the concepts are similar or identical in substance, and thus remains an excellent tool for navigating the current Federal procurement standards. If any questions arise, please contact your servicing attorney or legal counsel for assistance.

2 C.F.R. § 200.317 – 326 became effective on December 26, 2014. For disasters (and their associated projects) declared prior to that date, the relevant procurement standards can continue to be found in 44 C.F.R. § 13.36(a)-(i) (States, local and tribal governments) and 2 C.F.R. § 215.40-48 (Institutions of Higher Education, Hospitals, and Private Non-Profits).¹ As indicated above, while many of the concepts are similar or identical, there are some substantive differences between the old and the new standards. Accordingly, this checklist should not be used for procurements associated with declarations issued prior to 26 December 2014. Instead, see procurement standards Checklists 13.36 and 215.

Instructions: Each standard below is followed by a block for “Yes”, “No”, or in some cases, “Not applicable”. **Red font** is used to indicate the response which, if checked, indicates that the contract does not comply with federal requirements.

The term “non-Federal entity” (NFE) below refers to the entity that is conducting the procurement action (i.e., the state, local, or tribal government or private-non-profit entity).

¹ This includes projects associated with declarations issued prior to 26 December 2014, regardless of project start date. For example, if a disaster was declared on 1 November 2014, but contracting for a project under that declaration did not begin until 1 April 2015, then a State (or state agency/instrumentality) would still utilize the old procurement standards found at 44 C.F.R. § 13.36(a); local and tribal governments would follow § 13.36(b)-(i); and Institutions of Higher Education, Hospitals, and Private Non-Profits would use 2 C.F.R. §§ 215.40-48.

1. Does the procurement comply with the State's own procurement laws, rules, and procedures? §200.317 Yes No
2. Does the procurement comply with the requirement to make maximum use of recovered/recycled materials? § 200.317, § 200.322. Yes No N/A – work does not involve the use of materials (e.g., debris removal or other services)
3. **Does the contract include the following clauses?**²
 - a. If the contract amount exceeds \$150,000³, does it address **administrative, contractual, or legal remedies** in instances where contractors violate or breach contract terms, and provide for sanctions and penalties? Yes No
 N/A
 - b. If the contract amount exceeds \$10,000, does it address **termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement?** Yes No N/A
 - c. If the contract is for construction, does it include the required **Equal Employment Opportunity clause?**⁴ Yes No N/A
 - d. For construction contracts exceeding \$2,000 awarded under a Federal grant, does the contract include a **Davis-Bacon Act clause**⁵ and **Copeland "Anti-Kickback" Act clause**⁶ addressing prevailing wage rates? [Note that Public Assistance and Hazard Mitigation Grant Program contracts do NOT require these clauses.] Yes No N/A

² See Appendix II of 2 CFR part 200 for a more detailed description of these clauses. See also PDAT Manual, section IV.H for a detailed discussion of these clauses, including sample text.

³ \$150,000 is the current dollar threshold for the simplified acquisition threshold, as authorized by 41 U.S.C. § 1908.

⁴ The EEO clause can be found at 41 C.F.R. § 60-1.4(b).

⁵ [Insert sample text]

⁶ The clause may read as follows:

Compliance with the Copeland "Anti-Kickback" Act

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

- e. *If the contract amount exceeds \$100,000 and involves the employment of mechanics or laborers, does the contract include a **Contract Work Hours and Safety Standards clause**?⁷ Δ Yes Δ No Δ N/A*
- a. Rights to Inventions Made Under a Contract or Agreement.⁸ • *N/A*
- b. *If the contract or subgrant amount exceeds \$150,000, does the contract include clauses addressing the **Clean Air Act and the Federal Water Pollution Control Act**?⁹ Δ Yes Δ No Δ N/A*
- c. *Does the contract include mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201)? • Yes • No*
- d. *Does the contract include a **Suspension and Debarment clause**?¹⁰ Δ Yes Δ No¹¹*
- e. *Does the contract include an **Anti-Lobbying clause**?¹² Δ Yes Δ No*

⁷ 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.

⁸ As FEMA does not award grants or subgrants associated with research and development projects, this contract clause is inapplicable.

⁹ The clause may read as follows:

Contractor agrees 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), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

¹⁰ See PDAT Manual, pgs. 99-100 for sample text.

¹¹ A prospective contractor that is listed on the government-wide Excluded Parties List System in the System for Award Management (www.SAM.gov) as suspended or debarred, **CANNOT** be awarded a contract funded with Federal assistance.

¹² See PDAT Manual, pgs. 127-129. The clause may read substantially as follows:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient.

- i. For contracts exceeding \$100,000, have bidders submitted an Anti-Lobbying Certification? Yes No N/A
- f. Does the contract include a clause requiring the contractor to maximize use of recovered/recycled materials? Yes No N/A – work does not involve the use of materials (e.g., debris removal or other services)

If a State agency is awarding the contract, stop here. If the contract is being awarded by a local or tribal government or private nonprofit entity, continue with the checklist.



4. General requirements¹³

- a. Does the procurement comply with the NFE's¹⁴ own procurement laws, rules, and procedures? §200.318(a) Yes No
- b. Does the NFE maintain contract oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders? §200.318(b) • Yes • No
- c. Does the NFE have - §200.318(c)(1):
 - i. Written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts? Yes No
 - ii. Any employee, officer, or agent participating in the selection, award, or administration of a contract supported by a Federal award that has an actual or apparent conflict of interest?¹⁵ • Yes • No
 - iii. Any employee, officer, or agent that has solicited and/or accepted gratuities, favors, or anything of monetary value from contractors or parties to subcontracts?¹⁶ • Yes • No
 - iv. Written standards of conduct that provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. • Yes • No

¹³ See, 2 C.F.R. § 200.318

¹⁴ Non-Federal Entity (NFE)

¹⁵ Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

¹⁶ However, NFEs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

- d. *If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, does the non-Federal entity have written standards of conduct covering organizational conflicts of interest?* § 200.318(c)(2)¹⁷ **Δ Yes Δ No Δ N/A**
- e. The NFE must avoid acquisition of unnecessary or duplicative items. Has the NFE *considered* consolidating or breaking out procurements to obtain a more economical purchase? Where appropriate, has the NFE considered lease versus purchase alternatives? § 200.318(d) **Δ Yes Δ No**
- f. *Encouraged*, but not required standards.¹⁸
- g. *Is the contract being awarded to a responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement, giving consideration to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources?* § 200.318(h) **Δ Yes Δ No**
- h. *Is the NFE keeping records sufficient to detail the history of the procurement, including, but not limited to, records documenting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price?* § 200.318(i) **Δ Yes Δ No**
- i. *Is the contract a time-and-materials contract?*¹⁹ § 200.318(j) **Δ Yes Δ No**
 - i. If so, has the NFE documented why no other contract is suitable?
 - ┘ **Yes Δ No**

¹⁷ Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the NFE is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

¹⁸ §200.318(e) – to foster greater economy and efficiency, the NFE is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services (this section provides the authority for state schedule and mutual aid agreements, for example); §200.318(f) – NFEs are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs; and §200.318(g) – NFEs are encouraged to use value engineering clauses in contracts for construction projects (value engineering is a systematic and creative analysis of each contract item or task to encourage the contractor to develop more cost effective means to produce or procure requirements.).

¹⁹ Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, a time-and-materials contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. **[Note that FEMA will only reimburse costs under a time-and-materials contract for the first 70 hours of work performed. See FEMA PA Guide (2007 ed.), pg. 53.]**

- ii. Does the contract include a ceiling price that the contractor exceeds at its own risk? **Δ Yes Δ No**

j. *Is the NFE alone* responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements? §200.318(k) • *Yes* • *No*

5. **Competition:**

- a. All procurement transactions must be conducted in a manner providing **full and open competition** consistent with the standards of this section. *Does the procurement involve any of the following*²⁰ § 200.319(a):
 - i. Placing unreasonable requirements on firms in order for them to qualify to do business? **Δ Yes Δ No**
 - ii. Requiring unnecessary experience and excessive bonding? **Δ Yes**
Δ No
 - iii. Noncompetitive pricing practices between firms or between affiliated companies?²¹ **Δ Yes Δ No**
 - iv. Noncompetitive contracts to consultants that are on retainer contracts?²² **Δ Yes Δ No**
 - v. Organizational conflicts of interest?²³ **Δ Yes Δ No**
 - vi. 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? **Δ Yes Δ No**
 - vii. Any arbitrary action in the procurement process? **Δ Yes Δ No**
- b. Was the contractor that is bidding on the contract also involved with developing or drafting the specifications, requirements, statement of work, invitation for bids or request for proposals? (If so, that contractor must be excluded from competing for such procurements) § 200.319(a) • *Yes* • *No*
• *N/A*

²⁰ This list is non-exclusive and only serves as an example of some of the types of situations that are considered to be restrictive of competition.

²¹ For example, bid suppression or bid rigging.

²² For example, out-of-scope disaster work added to the consultant’s work on retainer.

²³ See, Fns 14 & 16.

- c. *Does the contract include a state or local geographic preference for local contractors?*²⁴ § 200.319(b) **Δ Yes Δ No**
- d. Do the NFE's written procurement procedures ensure that all solicitations comply with the following: § 200.319(c)
 - i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured? § 200.319(c)(1) **Δ Yes Δ No**
 - ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals? § 200.319(c)(2) **Δ Yes Δ No**
- e. If the NFE is using a prequalified list of persons, firms, or products which are used in acquiring goods and services: § 200.319(d) • *N/A*
 - i. Is the list current? • *Yes* • *No*
 - ii. Does the list include enough qualified sources to ensure maximum open and free competition? • *Yes* • *No*
 - iii. Were any potential bidders precluded from qualifying during the solicitation period?²⁵ **Δ Yes Δ No**

6. **Method of Procurement**

- a. Is the NFE using one of the following acceptable methods of procurement? § 200.320
 - i. **Micro-purchase** (i.e., purchases below \$3,000, see, §200.67 Micro-purchases). § 200.320(a) **Δ Yes Δ No**
 - 1. [Note: Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.]
 - 2. To the extent practicable, is the NFE distributing micro-purchases equitably among qualified suppliers? **Δ Yes Δ No**
Δ N/A – not practicable
 - ii. **Small purchase procedures** § 200.320(b) **Δ Yes Δ No**

²⁴ Geographic preferences are generally not allowed under FEMA grants. The only exception is that when contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

²⁵ Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

1. [Note: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the **lesser** of either (1) the federal small purchase threshold (i.e., \$150,000), or (2) whatever amount State or local procurement rules set as the small purchase threshold – *if more restrictive than the federal threshold.*]
2. Did the NFE obtain price or rate quotations from an adequate number of qualified sources?²⁶ **Δ Yes Δ No**

iii. Sealed bids § 200.320(c)²⁷ Δ Yes Δ No

1. [Note: Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Sealed bidding is the preferred method for procuring construction]
2. Are *all* of the following conditions to use sealed bidding present? § 200.320(c)(1) **Δ Yes Δ No**
 - a. A complete, adequate, and realistic specification or purchase description is available **Δ Yes Δ No**
 - b. Two or more responsible bidders are willing and able to compete effectively for the business **Δ Yes Δ No**
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price **Δ Yes Δ No**
3. *If sealed bids are used*, the following requirements apply: § 200.320(c)(2)

²⁶ FEMA has determined that for simplified purchase procedures, an adequate number of qualified sources is considered to be three (3). See, FEMA Recovery Fact Sheet 9580.212 – Public Assistance Grant Contracting Frequently Asked Questions (FAQ), FAC No. 3.

²⁷ Sealed bidding is generally used where price is the most important evaluation factor for the NFE. Accordingly, contract award under the sealed bidding method of procurement is made to the bidder submitting *the lowest priced, responsive and responsible bid*. “Responsive” refers to whether the bidder meets all the material requirements of the Invitation for Bid (IFB), while “Responsibility” is described at § 200.318(h).

- a. Did the NFE solicit bids from an adequate number²⁸ of known suppliers, providing them sufficient response time prior to the date set for opening the bids? **Δ Yes Δ No**
- b. If the NFE is a local or tribal government, was the invitation for bids publically advertised? **Δ Yes Δ No Δ N/A**
- c. Did the invitation for bids include any specifications and pertinent attachments, and define the items or services in order for the bidder to properly respond? **Δ Yes Δ No**
- d. Did the NFE open all bids at the time and place prescribed in the invitation for bids? **Δ Yes Δ No**
- e. For local and tribal governments, were the bids opened publicly? **Δ Yes Δ No Δ N/A**
- f. Did the NFE award a firm fixed price contract award in writing to the lowest responsive and responsible bidder?
┘ Yes Δ No
- g. If any bids were rejected, was there a sound documented reason supporting the rejection? • *Yes* • *No* • *N/A*

iv. Procurement by competitive proposals²⁹ § 200.320(d) Δ Yes Δ No

- 1. [Note: The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.]
- 2. Did the NFE publicize the Requests For Proposals (RFPs) and identify all evaluation factors and their relative importance? **Δ Yes Δ No**

²⁸ Unlike, for simplified purchase procedures, FEMA has not defined an “adequate number” of known sources under the sealed bidding method. While left undefined, a NFE is likely to meet this requirement through the application of “full and open competition.” (See fn. 26)

²⁹ Whereas contract awards under sealed bidding are focused on selecting the lowest responsive responsible bid, NFEs under the competitive procurement method may prioritize non-price factors, such as technical capability or past performance, over price and therefore award a contract to a contractor whose proposal is more expensive but reflects a better overall value to the NFE (e.g. “best value” contracting).

3. Did the NFE solicit proposals from an adequate number of qualified sources?³⁰ **Δ Yes Δ No**
4. Did the NFE have a written method for conducting technical evaluations of the proposals received and for selecting recipients? **Δ Yes Δ No**
5. Did the NFE award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered? **Δ Yes Δ No**
6. [Note regarding architectural/engineering (A/E) professional services: The NFE may use competitive proposal procedures for qualifications-based procurement of A/E professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. **The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.]**

v. Noncompetitive proposals § 200.320(f)³¹ Δ Yes Δ No

1. [Note: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one (or an improperly limited number of) source(s)]
2. Do one or more of the following circumstances apply? **Δ Yes Δ No**
 - a. The item is available only from a single source **Δ Yes Δ No**
 - b. The public exigency or emergency³² for the requirement will not permit a delay resulting from competitive solicitation **Δ Yes Δ No**
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in

³⁰ Unlike, for simplified purchase procedures, FEMA has not defined an “adequate number” of qualified sources under the competitive procurement method. While left undefined, a NFE is likely to meet this requirement through the application of “full and open competition.”

³¹ § 200.320(e) is reserved.

³² For an explanation of what “emergency” and exigency” mean, see PDAT Manual, pg 68.

response to a written request from the non-Federal entity
┘ **Yes** Δ **No**

- d. After solicitation of a number of sources, competition is determined inadequate.³³ Δ **Yes** Δ **No**

7. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

- a. Has the NFE taken the following affirmative steps³⁴ to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible?³⁵ § 200.321 Δ **Yes** Δ **No** • **N/A (document)**
- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists? Δ **Yes** Δ **No** Δ **N/A (document)**
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources? Δ **Yes** ┘ **No** Δ **N/A – no potential sources (document)**
 - iii. Dividing total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises?³⁶ Δ **Yes** ┘ **No** Δ **N/A – not economically feasible (document)**
 - iv. Establishing delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses, and

³³ Before utilizing this exception, Applicants should review their solicitation and the publicizing of their solicitation to ensure that it was not inadvertently drafted in a manner to reduce or eliminate competition, which resulted in the receipt of one or no proposals. If this is found to be the case, the Applicant should revise the solicitation and re-publicize the solicitation in order to resolve the competitive concerns.

³⁴ The following affirmative steps are non-exclusive; while these steps must be taken, additional steps, as determined by the NFE, local, state, or tribal government regulations or procedures, may also be taken.

³⁵ Collectively referred to as “socioeconomic contractors” or “socioeconomic contracting,” this requirement does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms; this requirement only imposes an obligation to carry out and document the six identified affirmative steps. Failure to do so has been frequently identified as a justification to de-obligate funding by the Department of Homeland Security (DHS), Office of Inspector General (OIG).

³⁶ This is not the same as breaking a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds to utilize their streamlined acquisition procedures (e.g. “project splitting.”)

women's business enterprises? Yes No N/A – the requirement does not permit (document)

- v. Using the services and assistance, *as appropriate*, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce Yes No N/A – not appropriate (document)
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above? Yes No N/A – no subcontracts will be let (document)

8. Contract cost and price

- a. If the contract amount (including contract modifications) exceeds \$150,000, did the NFE perform a cost or price analysis? § 200.323(a) Yes No N/A
- b. Did the NFE negotiate profit as a separate element of the price for each contract in *which there is no price competition and in all cases where cost analysis is performed*? § 200.323(b) Yes No N/A
- c. Is the contract a “cost plus a percentage of cost” or “percentage of construction cost” contract?³⁷ [Note: This form of contract is prohibited under the Federal procurement standards and is ineligible for FEMA reimbursement] Yes No

9. Bonding requirements for construction or facility improvement contracts exceeding \$150,000

- a. [Note: For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (i.e., \$150,000), the Federal

³⁷ This type of contract is separate and distinct from cost plus fixed fee, cost plus incentive fee, and cost plus award fee type contracts, which are permissible and used to incentivize contractors to perform to a higher standard of quality, lower cost, or faster performance. Cost plus percentage of cost contracts on the other hand provide none of these incentives; instead, there is a reverse incentive for the contractor to increase its costs as the higher its costs go, the more profit it earns, as its potential earnings are uncapped. The following characteristics are suggestive of a prohibited cost plus percentage of cost contract: (1) payment is on a predetermined percentage rate; (2) the predetermined percentage rate is applied to actual performance costs; (3) the contractor's entitlement is uncertain at the time of contracting; and (4) the contractor's entitlement increases commensurately with increased performance costs.

awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.]

- b.** If such a determination (see above) has not been made, does the procurement include the following? **Δ Yes Δ No Δ N/A**
- i.** A bid guarantee from each bidder equivalent to five percent of the bid price? **Δ Yes Δ No Δ N/A**
 - 1. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - ii.** A performance bond on the part of the contractor for 100 percent of the contract price? **Δ Yes Δ No Δ N/A**
 - 1. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii.** A payment bond on the part of the contractor for 100 percent of the contract price. **Δ Yes Δ No Δ N/A**
 - 1. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

END OF CHECKLIST

EXHIBIT Q

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

Requirements under the Uniform Rules. A non-Federal entity's contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Pmi 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity's own procedures in that area.

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (\$150,000) 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. See 2 C.F.R. Part 200, Appendix II, **¶ A.**
- b. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

- a. 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. See 2 C.F.R. Part 200, Appendix II, **¶ B.**
- b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. Equal Employment Opportunity.

- a. Standard. 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. § 60-1.3 must 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 Fed. Reg. 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). See 2 C.F.R. Part 200, Appendix II, **¶ C.**
- b. Key Definitions.

- (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- (2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The 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 advising the said labor union or workers' representatives of the contractor's commitments under this section,

and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The 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.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It **does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. 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 at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶D.

- c. 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.
- d. 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.
- e. In contracts subject to the Davis-Bacon Act, 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 at 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 Copeland Anti-Kickback 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 FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the next subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. As such, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), 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 at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, 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.
- d. 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.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

"Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work

done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance,** Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households - Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."
- b. If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity must 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

FEMA. See 2 C.F.R. Part 200, Appendix II, ,F F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor 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 FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ,F G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

"Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal

government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA."

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).
- c. 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 and activities. See 2 C.F.R. Part 200, Appendix II, § I; and Chapter IV, § 6.d and Appendix C, § 2. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that 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. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; Chapter IV, § 6.d and Appendix C, § 2.
- d. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any nonprocurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although "covered transactions" do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipient.
- e. Specifically, a covered transaction includes the following contracts for goods or services:
 - (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.

- (2) The contract requires the approval of FEMA, regardless of amount.
- (3) The contract is for federally-required audit services.
- (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

"Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

9. Bvrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ J; 44 C.F.R. Part 18; Chapter IV, 6.c; Appendix C, ¶ 4.
- c. 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. See Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

- d. The following provides a Byrd Anti-Lobbying contract clause:

"Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient."

APPENDIX A, 44 C.F.R. PART 18 CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date"

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. 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, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, **1K**; 2 C.F.R. § 200.322; Chapter V, **17**.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of

competition, where the purchase price of the 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.

- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

"(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpo/>. The list of EPA-designate items is available at <http://www.epa.gov/cpo/12products.htm>."

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes.

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and

agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, 1 XXVI (2013).

d. The following provides a contract clause regarding access to records:

"Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

12. DHS Seal, Logo, and Flags.

- a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, 1 XXV (2013).
- b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."

13. Compliance with Federal Law, Regulations, and Executive Orders.

- a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: "This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor

will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives."

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: "The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: "The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."