

MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS



PURCHASING MANUAL

ADOPTED: April 19, 2022

RESOLUTION NO. 22-4.27

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SECTION 1 INTRODUCTION

The purpose of this Purchasing Manual (“Manual”) is to establish specific directions and guidelines for all County Departments, Employees and Agents of the Martin County Board of County Commissioners (County) to use in procuring goods and services for a public purpose. The provisions of this Manual shall apply to every purchase of goods and services by County, unless an alternative purchasing procedure is required by federal or state law, grant provisions or the purchase of any goods or services obtained by or provided to County is pursuant to a contract which was executed prior to May 1, 2003, and which contains a provision that allows the County to extend the term or period of such contract. Any requirement of this Manual may be modified on a case-by-case basis by a majority vote of the Board.

SECTION 2 DEFINITIONS

The words defined in this section shall have the meanings set forth below whenever they appear in this Manual, unless; (1) the context in which they are used clearly requires a different meaning; or (2) a different definition is prescribed for particular part or provision.

Addendum (sing.)/Addenda (pl.)

A written change, addition, alteration, correction, or revision to a solicitation or contract document. Commonly, the name given to the document used to revise a solicitation.

Administrative Approval Request (AAR)

A form used to request approval to: advertise Request for Qualifications, Proposals, or Bid for goods or services; award a bid or contract; approve a Selection Committee required for Consultants’ Competitive Negotiation Act (CCNA) services; execute a Task Order or Work Order under a continuing service agreement; request permission to purchase non-budgeted equipment; execute a single task construction contract change order or consultant contract amendment, or; execute a Technology Investment Plan (TIP) amendment.

Aggrieved Bidder/Proposer/Offeror

The bidder/proposer/offeror who is may be adversely affected by the award of a contract to another bidder/proposer/offeror and protests or appeals the decision.

Amendment

An agreed addition to, deletion from, correction, or modification of a document or contract.

American Business

1. A business entity that is formed and registered in a state within the United States of America or the District of Columbia; or
2. A sole proprietorship or general partnership that is not registered as an entity, but where the principal office is located in a state within the United States of America or the District of Columbia and the sole proprietor or partners are U.S. citizens or permanent residents; or
3. A joint venture that is not registered as a business entity in a state within the United States of America or the District of Columbia where at least 50% of the joint venturers qualify under either (1) or (2).

Architectural and Engineering (A&E, A/E) Services

1. professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services
2. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
3. such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including: studies, investigations, surveying, mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

Bid

A price offered by a vendor to furnish specific Goods, Services and/or Construction in response to a Request for Bids (RFB).

Blanket Purchase Order (BPO)

A purchase order issued for the purchase of indeterminable miscellaneous items or materials, supplies, parts, etc., over a certain period of time (not to exceed one fiscal year).

Board, BOCC, BCC

The Board of County Commissioners of Martin County, Florida.

Certified Minority Business Enterprise

A business enterprise which has been certified by the State of Florida Department of Management Services as a minority business enterprise in accordance with the provisions of the “Small and Minority Business Assistance Act of 1985”.

Change Order

A contract modification that changes the specifications, statement of work, drawings, contract value or the contract performance time.

Commodity

A marketable item produced to fulfill a need or want and may reference both goods and services.

Construction

The process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings, or real property.

Consultants’ Competitive Negotiation Act (CCNA)

State law governing the procurement of Professional Services performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional practice (Section 287.055 Florida Statutes).

Consultant Services

Any narrow discipline wherein a known practitioner has, through education and experience, developed expert advisory and/or programming skills as a vocation; or any service performed primarily by vocational

personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory, study or programming activity, where the provider of any such consultant service is ordinarily obtained by means other than lowest price. This term shall not include construction or employment agreements.

Continuing Contract

A contract that allows for incremental execution using individual task orders or work orders.

Contract

Means (a) a deliberate verbal or written agreement between two or more competent parties to perform a specific act or acts; (b) any type of agreement regardless of what it is called for the procurement of goods, services, consultant services, or construction; and (c) a purchase order.

Contractor

Any individual or business having a contract with the County to furnish goods, services, or construction for an agreed-upon price.

County

Board of County Commissioners of Martin County, Florida.

County Administrator

The County Administrator, Deputy County Administrator, Assistant County Administrator of Martin County, Florida, or such person's designee.

Department Director

The duly appointed Director of any department of County. For the purposes of this Manual, the term Department Director shall include the Assistant County Administrator and the County Attorney.

Design-Build Firm

A partnership, corporation, or other legal entity that (1) is certified under Section 489.119, Florida Statutes, to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or (2) is certified under Section 471.023, Florida Statutes, to practice or to offer to practice engineering; certified under Section 481.219, Florida Statutes, to practice or to offer to practice architecture; or certified under Section 481.319, Florida Statutes, to practice or to offer to practice landscape architecture.

Design-Build Contract

A single contract with a design-build firm for the design and construction of a public construction project.

Design Criteria Package

Concise, performance-oriented drawings or specifications for a public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, and parking requirements applicable to the project.

Design Criteria Professional

A firm who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under Chapter 471, Florida Statutes, to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

Designee

A duly authorized representative of a person holding a superior position.

Disadvantaged Business

A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

Emergency Purchase

An expeditious purchase of goods, services, consultant services and/or construction to reduce an imminent or existing threat to the health, safety or welfare of persons or property within the County.

E-Payables

A method of payment whereby a vendor is issued a credit card number and notified by e-mail when payments are authorized.

Family

Parent, sister, brother, spouse, children, nieces, nephews, step-parent, step-children, step-brother, step-sister, half-brother, half-sister, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, aunts, uncles, grandchildren, and grandparents of a County employee, as well as members of the same household and their parent, sister, brother, children, nieces, nephews, step-parent, step-children, step-brother, step-sister, half-brother, half-sister. Daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, aunts, uncles, grandchildren and grandparents of a County employee.

Fixed Assets

Items with useful life over one (1) year and valued over \$5,000. Items with a value of \$1,000 or greater shall be deemed a fixed asset and affixed with a County inventory tag.

Goods

Any tangible personal property other than real property.

Ineligible Bidder/Proposer/Offeror

A bidder/proposer/offeror that does not meet the qualifications stated in the solicitation or a supplier that is currently debarred, suspended, or disqualified.

Item

A single separate unit, article, product, material, or service.

Local Business

1. Has had a fixed office or distribution point located in and having a street address within Martin County for at least one (1) year immediately prior to the issuance of the request for competitive bids by the County. The fixed office or distribution point must be staffed. Post office boxes shall not be

- used or considered for the purpose of establishing a physical address; and
2. Has had, for at least one year immediately prior to the date of the issuance of the request for competitive bids by the County, a current local Business Tax Receipt issued by Martin County, if applicable; and
 3. Holds any license or competency card required by County; and
 4. If the contract is awarded, will be the person or entity in direct privity of contract with the County and not as a subcontractor, other lower tier subcontractor, materialman or supplier.
 5. Reciprocity. Martin County may enter into an agreement with any other local government wherein the preferences of this section may be extended and made available to vendors that have a local business tax receipt issued by that specific local government to do business in that local government that authorizes the vendor to provide the commodities and services to be purchased, and a physical business address located within the limits of that local government. Such agreement shall require vendor compliance with all requirements of Section 135.7, General Ordinances, Martin County Code.

Lowest Responsive and Responsible Bidder

The Bidder who fully complied with all of the bid requirements and whose past performance, reputation, and financial capability is deemed acceptable, and who has offered the most advantageous pricing or cost benefit, based on the criteria stipulated in the bid documents.

Minority Business Enterprise (MBE)

Any small business concern which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least fifty-one percent (51%) owned by minority persons, and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession.

Minority Person

A lawful permanent resident of Florida who is:

1. A Black American – a person having origins in any of the Black racial groups in Africa.
2. A Hispanic-American – a person of Spanish or Portuguese culture, with origins in Mexico, South America, Central America, or the Caribbean, regardless of race.
3. An Asian American – a person having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands prior to 1778.
4. A Native American – a person having origins in any of the Indian Tribes of North America prior to 1835.
5. An American woman.

Negotiation

A process of planning, reviewing, analyzing, and conferring used by two or more parties to reach a mutually acceptable agreement in a contracting relationship.

Negotiation Team

A group of people, typically including a procurement professional, project manager, technical staff, financial analyst, and legal expert with the essential skills or knowledge necessary to reach a sound agreement.

Non-local business

A bidder which is not a local business as defined herein.

Personal Property

Property consisting of movable articles both physical, such as furniture or computers, or non-physical, as stocks or bonds.

Procurement

Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Proposal

An executed formal document submitted to the County stating the goods, consultant services, and/or services offered to satisfy the need as requested in a request for proposal.

Protest

A written objection by an interested party to a solicitation or award of a contract with the intention of receiving a remedial result.

Public Purpose

Something that provides a benefit to the public and the County.

Public Record Exemptions

Items which are exempt from Chapter 119, Florida Statutes, pursuant to a specific statutory exemption.

Purchase

Buying, purchasing, renting, leasing, or otherwise acquiring any supplies, materials, equipment, goods, consultant services, construction, and/or services required by the County for public purposes in accordance with the law and County procedures.

Purchase Order (PO)

A purchaser's written document to a supplier formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, cost of items being purchased, delivery schedule, terms of payment, and transportation.

Purchasing

A Division of the Administration Department headed by the Purchasing Manager and responsible for procurement of goods and services.

Procurement/Purchasing Card (P-Card)

A charge card issued to an employee for the purpose of making authorized purchases on the County's behalf within pre-approved authority levels and spending limits.

Qualified Bidder, Offerer, Proposer, Quoter, or Respondent

An individual or business entity that has submitted a bid, offer, proposal, quotation, or response and that has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that gives reasonable assurance of good faith and performance. The County shall not require unreasonable qualifications and experience so as to not restrict competition.

Quasi-governmental

An agency supported in whole or part by government funds but privately managed.

Quotation

A statement of price, terms of sale, and description of goods or services offered by a supplier to the County; may be non-binding if solicited to obtain market information for planning purposes.

Real Property

Property consisting of lands and all rights, privileges, or improvements belonging to and passing to lands, as buildings, crops, or mineral rights.

Request for Bids (RFB)

The solicitation document used for competitive sealed bidding for the purchase of goods, services, and/or construction, for which the County has adequate funding. The Request for Bid is used when the County is capable of specifically defining the scope of work for which the contractual service is required or when the County is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written solicitation includes a solicitation that is electronically posted.

Request for Proposals (RFP)

A written solicitation for competitive sealed proposals responses for goods, consultant services, and/or other services, including solutions or alternative solutions for the scope of work, specifications, or contractual terms and conditions as defined, for which the County has adequate funding. The request for proposals is used when it is not practicable for the County to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the County is requesting that a responsible vendor propose a commodity, group of commodities or contractual service to meet the specifications of the solicitation document. A written solicitation includes a solicitation that is electronically posted. Evaluation of a proposal or response is based on prior established criteria which involves more than price. The RFP shall state the relative importance of price and other evaluation criteria.

Request for Quotation

An informal request either oral or written to solicit prices for specific goods and/or services.

Responsible Bidder/Proposer/Offeror

A vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance including but not limited to:

- The appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements;
- The capability to comply with the required delivery schedule considering all their existing business commitments;
- A satisfactory record of performance;
- A satisfactory record of integrity;
- The vendor, its principals or affiliates are not presently debarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in any transaction by any municipal, County, State, or Federal department or agency;
- Legal qualification to contract with the County and has supplied all necessary information in connection with the inquiry concerning responsibility.

Responsive Bid/Proposal/Offer

A bid, proposal, or offer that fully conforms in all material respects to the solicitation and all of its

requirements, including all form and substance.

Services

The furnishing primarily of labor, time, and/or effort by a Vendor, wherein the provision of goods or other specific end products other than documents relating to the required performance is incidental or secondary. This term shall not include construction or employment agreements.

Services Rendered Contract

A contract used for the provision of services from an individual/person (not a legally formed entity).

Single Project Contract

A contract for a single defined project.

Single Source

Goods and/or services which may be available from more than one source but for a justifiable reason, needs to be acquired from a particular vendor.

Small Business

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

Small Purchase

Any budgeted purchase of goods, services or commodities in an amount of \$35,000 or less per fiscal year or contract period. For purposes of this definition, reasonable or common components of a transaction shall be cumulatively considered part of a single contract such that no purchase shall be artificially divided so as to appear to fall within the definition of a small purchase.

Sole Source

Supply, service, or construction item which are propriety, or available from only one source, and for which there are no competitive alternate sources.

Solicitation

Request for information, expression of interest, request for bids, request for qualifications, request for proposal, request for quotation, or a multi-step bidding procedure.

Specification

Any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

Task Order

An individual request for products or services under a task order contract. These contracts are structured to allow incremental execution using individual task orders.

Vendor

An actual or potential consultant, supplier or contractor of construction, goods, services, and/or consultant services.

Work Order

An individual request for services under a continuing services contract. These contracts are structured to allow incremental execution using individual work orders.

**SECTION 3
PURCHASE AUTHORIZATION**

3.1 Purchase and contract award authority is delegated as follows:

Board of County Commissioners	<ul style="list-style-type: none">• all contracts valued at \$500,000 or greater;• change orders and amendments that meet the thresholds herein and increase the contract more than 10% of original contract value;• all contracts with terms greater than 5 years
County Administrator or designee	<ul style="list-style-type: none">• all contracts valued at \$499,999.99 or less;• change orders and amendments that meet the thresholds herein and increase the contract more than 10% of original contract value (not to exceed \$499,999.99)
Purchasing Manager or designee	<ul style="list-style-type: none">• Contracts delegated by the County Administrator or designee• Contract amendments for scope of service/work changes
Department Director or designee	<ul style="list-style-type: none">• Work orders and task orders under previously approved continuing services contracts;• Payments under previously approved contracts up to dollar limits established by the Department on the invoice payment authorization form

3.2 In addition to the purchase and contract award authority referenced in 3.1 above, the County Administrator or designee is delegated signature authority for all contract documents approved by the Board. The County Administrator will delegate signature authority through Administrative Policy. Notwithstanding the above, the Board may amend or separately provide contract award and signature authority at its discretion.

3.3 County employees are not authorized to purchase non-exempt goods or services without a PO or P-Card.

3.4 Any purchase made contrary to the provisions of the Purchasing Manual shall not be binding on the County unless approved by the Board or designee and may be subject to disciplinary action. All procurements shall comply with procurement rules and applicable local, federal and state laws and regulations as required.

3.5 The purchase of food with County funds must be for a public purpose and pre-approved in writing by the County Administrator or Designee, **except** for:

- A. purchase of food for resale at a County concession facility
- B. food provided for the Martin CARES program
- C. food provided for children in after school or camp programs provided by the Parks &

- Recreation Department
- D. food provided to participants and volunteers of race and other events hosted by the Parks & Recreation Department
 - E. food and meals purchased by the Office of Tourism in connection with marketing efforts including gratuities, all of which are allowed
 - F. food that is purchased for a group of employees or individuals that are either being recognized or assisting the County with County related activities

SECTION 4 ETHICAL STANDARDS

Violations of ethical standards shall be handled in accordance with applicable Florida Statutes and the Martin County Human Resources Policy Manual. The Purchasing Division complies with the National Institute of Government Purchasing (NIGP) Code of Ethics.

SECTION 5 REVISION TO PURCHASING MANUAL

The Purchasing Manual will be reviewed no less than every two (2) years by the County Administrator in accordance with Section 135.6, General Ordinances, Martin County Code. Any revisions must be approved by the Board by resolution.

SECTION 6 CONFLICT OF INTEREST

- 6.1** The following standards of conduct apply generally to all transactions and specifically to all federally supported grant projects. Violations of these standards of conduct may result in disciplinary action as set forth in Section 112.317, Florida Statutes, provided that such disciplinary action does not conflict with the jurisdiction of the State of Florida Commission on Ethics.
- 6.2** No elected official, employee, or agent of the County shall participate in the selection, nor in the award, nor administration of a contract, nor the procurement of goods or services, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the elected official, employee, or agent, any member of his/her family, his/her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected or considered for award.
- 6.3** Vendors shall not allow County employees or former County employees (within two years of separation from employment with Martin County) to work on County projects or provide services to the County under agreements or sub-agreements without express written consent from the County Administrator or designee.
- 6.4** Section 112.313, Florida Statutes, prohibits contracts with County employees, officers and advisory board members. All vendors must disclose the name of any Martin County officer or employee who is employed by (Section 112.313(7), Florida Statutes) or owns, directly or indirectly an interest in the vendor's firm or any of its branches (Section 112.313 (3), Florida Statutes). Advisory Board Members, County officers or County employees may qualify for an exemption by including a completed Commission on Ethics Form 3A with their submittal and filing such form with the Supervisor of Elections in accordance with Section 112.313(12)(b), Florida Statutes. Please contact the Purchasing Division for additional information.

- 6.5** An organizational conflict of interest occurs when any of the following circumstances arise:
- A. A lack of impartiality or impaired objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
 - B. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - C. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

The County shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

- 6.6** Pursuant to Section 12.02, Conflict of Interest, of the Martin County B.O.C.C. Human Resources Policy Manual (Revised: October 2021), the County's elected official, employees, or agents shall neither solicit nor accept gratuities, favors, or anything regardless of value from contractors, potential contractors, or parties to sub-agreements.

SECTION 7 PURCHASING DIVISION

- 7.1 General.** The Purchasing Division is headed by the Purchasing Manager established in the Administration Department, as designated by the County Administrator. The goals of the Purchasing Division and the responsibilities of the Purchasing Manager are to provide high quality, professional service to internal and external customers and to accomplish the following:
- A. Assure compliance with the laws and regulations that govern public procurement in the State of Florida;
 - B. Provide uniformity in the procurement of goods and services by employees and agents of the County;
 - C. Provide an open, fair, and competitive process for obtaining goods and services;
 - D. Promote cost efficiency in the procurement of goods and services; and
 - E. Make expert assistance available to County employees and agents of the County.
- 7.2 Function.** The functions of the Purchasing Division are:
- A. Procurement, including, but not limited to:
 - 1. Identifying department needs for goods and services and assisting in/or preparation of bidding documents;

2. Researching and evaluating specified goods and services to establish vendor sources for required commodities;
3. Acquisition of goods and services;
4. Maintaining a fair and open arena for all vendors;
5. Assisting in preparation of unit price contracts for County Departments that have an on-going need for various commodities;
6. Researching past, current and future market trends of various markets to include new sources of supply, pricing, serviceability and other factors which can assist management in making buying decisions;
7. Assisting in-County municipalities, contiguous counties/cities, vendors, Constitutional Officers, and State Agencies, as needed;
8. Promoting positive aspects of “doing business” with County in order to further encourage and maintain a fair and open arena for competition;
9. Providing or coordinating training applicable to procurement functions;
10. Interoffice mail courier and US mail processing;
11. Fixed asset inventory control; and
12. Contract management.

7.3 Procurement Files.

- A. Any and all procurement determinations relating to the solicitation, award or performance evaluation of bids or proposals shall be maintained in Procurement files by the Purchasing Division except those procurements subject to the Small Procurement exceptions which shall be maintained by those Departments.
- B. All procurement records shall be retained and disposed of by the County in accordance with records retention guidelines and schedules approved by the Division of Library and Information Services of the State of Florida. If a contract is funded, in part or in whole, by a federal agency, then all procurement records pertaining to that contract shall be maintained for the time specified in the funding contract.

SECTION 8 TRANSACTIONS EXEMPT FROM COMPETITIVE PROCUREMENT

8.1 The following transactions are exempt from competitive procurement:

- A. Real Property acquisition, such as land, easements, rights-of-way, existing buildings, structures, or improvements, resulting from negotiations and approved by the Board
- B. Court-ordered fines and judgments, resulting from litigation
- C. Court-ordered fees, resulting from the judicial process
- D. Fees and costs related to bond refunding, loans and investments
- E. Debt service payments
- F. Refunds and reimbursements
- G. Grant disbursements or payments to federal, state, or local government agencies, or to private groups or agencies
- H. Disbursements to County or Constitutional officers of funds budgeted for their requisition and use
- I. Inter-fund or inter-departmental transfers or reimbursements within or among County Departments
- J. Aid disbursements for housing and rental subsidies, hospital indigent payments, Medicaid,

- indigent burial services or other welfare and medical assistance
- K. Insurance and related services including but not limited to liability, property, medical, and workers compensation insurance, insurance consulting or payments from any loss fund established for such purpose
- L. Utilities (electricity, natural gas, telephone, cell phones, cable, etc.)
- M. Advertising in newspapers, magazines, social media, etc.
- N. Toll charges
- O. Fuel charges for County vehicles, vessels and equipment (fueled outside of County fueling stations)
- P. Postage, shipping and express mail costs
- Q. Dues or memberships for a public purpose, job required professional license fees and sponsorships (late fees to be paid by employee)
- R. Periodicals, magazines, newspapers, copyrighted and patented material, County code books and updates, library materials only available from a single source and similar items
- S. Recreational instructors, tutors, entertainment providers and sports officials for programs provided by Parks & Recreation, Office of Tourism and Marketing, or the Martin County Library System
- T. Professional medical services and authorized hospital expenses
- U. Medical supplies purchased by the County for the Employee Wellness Center provider
- V. Travel expenses
- W. Training, tuition and fees for training instructors or facilitators relating to a County purpose or program (re-take fees due to failing grade shall be paid by employee)
- X. Legal services including attorneys, expert witnesses, court reporter services and legal fees
- Y. Title insurance, title commitments, title searches, and ownership and encumbrance searches and real estate appraisal services to determine the market value of real property
- Z. Political lobbying services
- AA. Transactions authorized by Agreements approved by the Board
- BB. Works of art for public places, art design, maintenance, consulting and conservation services
- CC. Franchise agreements
- DD. Environmental mitigation credits
- EE. Security and law enforcement services provided by employees of the Martin County Sheriff's Office or City of Stuart Police Department
- FF. Activities and venue admission fees for camp, recreation and after school programs
- GG. Services provided by non-profit organizations, educational and health care institutions, governmental and quasi-governmental agencies
- HH. Transactions authorized under the Parks & Recreation Department Revenue Enhancement Program
- II. Vehicle registration fees
- JJ. Office, warehouse space, boat slip, submerged land or other property rental or lease
- KK. Permit and license fees
- LL. Fees owed to the Clerk of the Circuit Court or other constitutional officers
- MM. Railroad leases, maintenance & repair charges and fees
- NN. Right-of-way (ROW) maintenance agreements
- OO. Warranty or maintenance agreement costs for services by the original vendor, manufacturer or installer
- PP. Maintenance agreements, licenses, upgrades, parts and services for existing software and hardware
- QQ. Mandatory drug court testing services
- RR. Services required by local, state or federal law
- SS. Interlibrary loan fees

- TT. Payments to vendors utilizing County funds for procurements by Martin County Constitutional Officers
- UU. Continuing education events or programs that are offered to the general public and for which fees have been collected which pay all expenses associated with the event or program are exempt from requirements for competitive solicitation.
- VV. Goods and/or services given or accepted by the County via grant, gift or bequest
- WW. Items purchased for resale to the general public
- XX. Goods, professional services, and agreement services from a sole source, single source or standardization upon justification by the Department Director and approval of the Purchasing Manager.

8.2 Sales Tax Savings. In order to limit the Florida Sales Tax upon a project and pursuant to Florida Statutes, and particularly Rule 12 A-1.094 (3), Florida Administrative Code, purchases under this procedure shall be exempt from competitive procurement.

- A. The County shall issue a Certificate of Entitlement to the Contractor certifying: (1) that the materials and supplies purchased will become part of a public facility; and (2) that the County will be liable for any tax, penalty or interest due should the Department of Revenue later determine that items purchased do not qualify for exemption.
- B. County shall provide to Contractor a requisition form to be utilized for purchase of those supplies, materials and equipment (SME) described herein. County reserves the right to, at any time during the term of the project, add to, delete from or modify the description of supplies, materials and equipment described herein, at County's sole discretion.
- C. Requisition forms will only be issued for the SME described herein. Such forms shall be prepared and submitted by the Contractor to the County. Such form shall be submitted in sufficient time for review and consideration by County so that the materials may be acquired directly by County and delivered to the project site in sufficient time to assure its availability at the time that it is needed and so as not to delay progress of the project. It shall be the responsibility of contractor to assure that such requisition forms are submitted to County's representative for approval by County with sufficient time for the County's review and processing, such that no delay shall impact the need for or order of the item. It shall be the responsibility of Contractor to assure the subcontractors, sub-subcontractors, specialty contractors and others have the materials sought to be requisitioned on hand at the time required for installation in accordance with the project schedule.
- D. County will issue POs to the appropriate vendors as designated and shown upon requisition forms. A copy of the PO will be returned to the Contractor.
- E. Upon delivery of the material purchased to project site, a delivery ticket shall be signed by a representative of County and by doing so the County shall take title of the materials delivered. Delivery ticket must be attached to the invoice to County, to be forwarded through Contractor.
- F. Invoices addressed to the Martin County Board of County Commissioners shall be submitted by the Contractor to the County in a timely manner so as to allow County to take advantage of any applicable discounts. Payment of invoices for materials purchased as described in this procedure shall be issued by the County directly to the vendor to whom the PO was issued.

- G. Contractor shall prepare a complete list of instructions to be distributed to all applicable subcontractors with the procedures to be followed under the Sales Tax Savings Procedures. These instructions shall cover those matters hereinafter set forth.
- H. Materials, supplies, and equipment acquired using this procedure shall be subject to the warranty provisions as required by the Contract between the Contractor and the County. Contractor must acknowledge that County will be ordering materials for said project pursuant to the ability to benefit from the tax savings provisions stated herein. Contractor further agrees that it shall be responsible for acceptance of delivery, storage, and installation of said products ordered by County. Further, Contractor shall be liable for all loss or damage to said products subsequent to delivery of same from the vendors/suppliers.
- I. Foregoing procedure is for the purpose of limiting Florida Sales Tax upon the project pursuant to Florida Statutes and particularly Rule 12 A-1.094(3), Florida Administrative Code. Provisions hereof and procedures shall be construed in order to carry out the intent of the parties. Provisions hereof and procedures established hereby may be amended by County at any time, upon any indication that such change, amendment or alteration is necessary to assure non-taxable sales tax treatment of the project.
- J. The Contractor shall be responsible for any defects, storage, delivery, and installation as set forth in the Contract Documents for any and all materials, products, and systems purchased by the County's POs. The Contractor shall maintain as a part of the required Builders' Risk Insurance, or other insurances being provided, full replacement coverage for all items purchased by the County under this Sales Tax Savings Procedure.

SECTION 9 PAYMENT FOR GOODS & SERVICES

- 9.1 Prompt Payment Act.** In accordance with Chapter 218, Florida Statutes, local governments are required to pay vendors for goods and services in a timely fashion. Departments are required to date stamp invoices upon receipt and shall make payment within:
 - A. 45 days for goods or services other than construction services;
 - B. 25 days for construction services (where invoices are approved by a third-party); and
 - C. 20 days for construction services (where invoices do not require third-party approval).
- 9.2** All purchases of goods and services will have a properly completed PO or shall be processed using a County P-Card.
- 9.3** All PO overages in excess of \$10.00 shall be processed via a written change to the PO.
- 9.4** Direct payments or check requests by use of Payment Confirmation Letter (PCL) shall be allowed on a limited basis for purchases exempt from competitive procurement only and for payments from revenue or balance sheet accounts that cannot be accomplished through the PO system. Other check requests may be approved by the Purchasing Manager, or designee, on a case by case basis.

9.5 Services Rendered Contract. A Services Rendered Contract may be required for all services provided by an individual/person (not a legally formed entity) as determined by the Purchasing Manager. Services that exceed the small purchase threshold annually by an individual require a formal bid or justification of sole or single source.

9.6 Purchasing Card (P-Card). P-Card purchases shall be in accordance with the P-Card Use Procedure. Failure to comply with these procedures may result in employee removal from the P-Card Program, including immediate termination of the employee's P-Card, and other disciplinary action as appropriate in accordance with County disciplinary procedures.

A. The goals of the P-Card program include:

1. Providing an efficient and cost-effective method of purchasing and paying for goods and services required by departments.
2. Reducing the use of petty cash, direct pay requests and open-ended blanket POs;
3. Ensuring Procurement and P-Card purchases are in accordance with the County's policies, Florida Statutes, Chapter 287, Florida Statutes; and Florida Administrative Code 60A-1 (F.A.C.)
4. Reducing the time and money spent processing low dollar transactions;
5. Ensuring that Martin County bears no legal liability from inappropriate use of P-Cards; and
6. Providing for disciplinary action if the P-Cards are misused.

B. The following goods and services shall not be purchased with the P-Card:

1. Personal Items
2. Cash Advances
3. Gas and Oil Products (unless purchased for County owned vehicles, vessels and equipment)
4. Personal telephone calls
5. Surplus Items in the Warehouse
6. Meals/food unless specifically allowed in grants or authorized per Purchasing Manual Section 3.5 or approved by the County Administrator or designee
7. Other supplies or services that may be prohibited by the Financial Analyst or Purchasing Manager.

9.7 Payment for Purchases Without Competitive Procurement.

A. Payment for purchases without competitive procurement may be permitted under the following circumstances:

1. The commodity or service is approved as a Sole or Single Source purchase pursuant to Section 14;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. After solicitation of a number of sources, competition is determined inadequate.

B. Prior to making any purchase as identified in items #2 and #3 above the requesting Department must complete the Noncompetitive Procurement Justification form and submit

to the Department Director and Purchasing Division for review and approval.

SECTION 10 STATE OR FEDERALLY FUNDED GRANT PROCUREMENTS

- 10.1** The Board recognizes that certain procurement procedures for state or federally funded grant programs may conflict with standard County procedures. The County Administrator is authorized to modify County procurement procedures in order to comply with procurement procedures for state or federally funded grant programs.
- 10.2** Purchases utilizing Federal Transit Administration (FTA) funds must comply with all requirements in 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, if applicable.
- 10.3** Procurements of professional services and non-housing related construction, paid for in whole or part with Community Development Block Grant (CDBG) funds, shall utilize the County's CDBG Procurement Policy. Procurements related to housing construction, paid for in whole or part with CDBG funds that will have a contract between a homeowner and contractor, the County shall utilize the Housing Assistance Plan & Procedures approved by the Board.
- 10.4** In order to receive Federal assistance, the County must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, hereafter referred to as the Uniform Rules, at 2 CFR Part 200.
- 10.5** Unless prior written approval has been obtained from the County Administrator and any granting agencies, any consultant firm or its affiliate who was the Designer or Engineer of Record is precluded from bidding on the same project as the construction contractor, a member of the construction contractor's team (subcontractor), or as a Consultant for Construction Engineering and Inspection (CEI) services.

SECTION 11 COOPERATIVE PURCHASING AND OTHER GOVERNMENT CONTRACTS

11.1 Other Government Contracts

- A. In lieu of bids or quotes, the County may utilize contracts of other governments and agencies (also known as "piggybacking") to procure goods and services if the following conditions are present:
 - 1. The solicitation documents and selection procedures used by the other government or agency are consistent with the County's purchasing regulations; and
 - 2. The vendor signs an Authorization of Contract Rights issued by Martin County; and
 - 3. The terms and conditions, including the scope of work (unit pricing and number or volume of goods and services purchased), are substantially similar to the terms and conditions of the original contract.
- B. Piggyback of contracts governed by Section 287.055, Florida Statutes, the Consultants Competitive Negotiation Act (CCNA) is prohibited.
- C. Piggybacking may not be used for the following types of agreements, unless first reviewed

by the County Attorney and approved by the County Administrator or designee:

1. Construction services
2. Professional services contracts

D. Use of County Contracts by Other Entities

1. At the option of the Contractor, use of County contracts may be extended to other governmental agencies, and non-profit organizations for piggybacking.
2. Each entity allowed by the Contractor to use a County contract shall do so independent of any other entity. Each agency shall be responsible for its own purchases and shall be liable only for goods or services ordered, received and accepted. The County does not endorse the use of any contractor and shall not be liable for any third-party transaction. The Contractor shall not be obligated to extend piggyback offers.

E. If federal funds are used, the County may exercise the option to utilize other government contracts provided that:

1. The bid documents and selection procedures used by the other government are consistent with the County's purchasing regulations;
2. the original contract was procured in compliance with 44 C.F.R. § 13.36;
3. an assignability clause is included in the original contract,
4. the terms and conditions, including the scope of work (unit pricing and number or volume of goods and services purchased), are substantially similar to the terms and conditions of the original contract;
5. the contract price is fair and reasonable;
6. the contract provisions are adequate for compliance with all Federal requirements based on the Federal funding source (i.e. FTA, FDOT, FHWA, FEMA, etc.); and
7. 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.

11.2 State Contracts. The State of Florida, Department of Management Services, Division of State Purchasing, administers statewide contracts and agreements for use by Florida local governments. Statewide contracts and agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden while complying with Chapter 287, Florida Statutes, governing the purchase of products and services. Information is available at www.dms.myflorida.com. Purchasing from the Division of State Purchasing contracts is authorized.

11.3 Cooperative Purchasing agreements are available and authorized for use. Cooperative Purchasing allows for local governments to take advantage of the buying power offered through multi-agency competitive solicitations through agencies including but not limited to:

- A. BuyBoard
- B. Fire Rescue Group Purchasing Organization (FRGPO)
- C. Florida Sheriff's Association (FSA)
- D. Houston-Galveston Area Council (H-GAC)
- E. MiCTA
- F. National Cooperative Purchasing Alliance (NCPA)
- G. National Joint Powers Alliance (NJPA)
- H. OMNIA Partners, Public Sector (formerly U.S. Communities and National Intergovernmental Purchasing Alliance (NIPA))
- I. Sourcewell
- J. The Interlocal Purchasing System (TIPS)
- K. The Purchasing Cooperative Network (TCPN)
- L. U.S. General Services Administration (GSA)

SECTION 12 PUBLIC RECORDS

12.1 Public Record Exceptions for Formal Solicitations.

- A. General exemptions from inspection or copying of public records for formal solicitations:
 - 1. In accordance with Florida Statute 119.071(b)(2), Sealed bids, proposals, or replies received by a Florida agency pursuant to a competitive solicitation shall remain exempt from disclosure (119.07(1) and s. 24(a), Art. I of the State Constitution) until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.
 - 2. In accordance with Florida Statute 119.071(b)(3), If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.
 - 3. In accordance with Florida Statute 119.071(b)(3)(c), Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

SECTION 13 SMALL PURCHASES

13.1 No purchase of goods, consultant services, services and/or construction shall be artificially divided

so as to fall within the small or micro purchase exemption.

- 13.2** Small purchases include purchase of any item, service or commodity which adds up to less than \$35,000 in a fiscal year, countywide.
- A. Purchases of \$10,000 or less per vendor, per commodity, per fiscal year require no competitive quotes; but are expected to be made from existing competitive contracts whenever possible. Each department will be responsible for making a fair and reasonable price determination, tracking expenditures and maintaining files.
 - B. Purchases between \$10,000.01 and \$35,000 shall be based on three (3) written or internet quotations documenting all relevant information. Specifications provided to the vendors must be complete, identical, accurate and unambiguous in order to prevent shipment of inadequate goods and to prevent claims arising from errors. The written quotes must clearly identify the vendor making the quote and the total price being quoted. Summary quotes must be included within the DocText of the PO, and the original quotes received retained by the department for future reference. A written statement from the vendor that it is unable to provide a quote for the requested specifications may be considered as a quote for meeting the (3) three quote requirement.
 - C. Evaluation and recommendation for award should be based on the quotation that best meets price, quality, delivery, service, past performance, and reliability.
 - D. Preference shall be given to Local businesses and American businesses in the purchase of goods and services except when prohibited by federal or state law or other funding source restrictions.
 - E. Small purchases may be formally bid. If bid, all terms within the bid section of this manual will apply.
- 13.3** Any change to a PO or contract made in accordance with the small purchase exemption authorized by this Manual that would raise the total PO or contract value to an amount in excess of the small purchase threshold, must be approved by the County Administrator or designee. Only one such change will be authorized per PO. The requesting department will be directed by Purchasing to formally bid the item, service or commodity prior to the next PO being issued.

SECTION 14 SOLE AND SINGLE SOURCE PURCHASES

- 14.1** A determination of sole source or single source may be made by the Purchasing Manager, as designee of the County Administrator, after conducting a good faith review of available sources, which demonstrates there is only one source for the required supply, service, or construction item. A record of determination of the sole source shall be maintained by the Purchasing Division. A sole source procurement involving contracts or purchase of materials for the construction, modification, alteration, or repair of any publicly owned facility shall be governed by Section 255.20, Florida Statutes. Sole source and single source requests must be renewed every two (2) years including justification and reaffirmation that a good faith effort has been made to find other available sources.

The Department Director shall provide written justification citing the reason for sole/single source purchase per Section 14.2 or 14.3. The justification for sole/single source procurements must

document that a good faith effort has been made in seeking other sources. A justification letter from the vendor shall also be provided citing the reasons that they qualify as sole/single source vendor. Documentation shall be sent to Purchasing for evaluation and approval prior to the department entering a PO.

14.2 Sole Source. For a commodity or service to be deemed a sole source procurement, the department must provide the appropriate documentation proving at least one of the following:

- A. A different brand, make, or specifications would be incompatible with currently owned equipment or systems.
- B. The purchase is a component, repair, or replacement part of existing equipment or system for which no commercially available substitute exists, and the purchase can only be made from the manufacturer, sole distributor or service provider.
- C. Standardization of goods/services
 - 1. Where standardization is determined to be desirable by the Purchasing Manager, the purchase of materials, supplies, equipment and certain contractual services may be made by negotiation.
 - 2. In order to standardize a good/service, the department/division must supply the following information:
 - a. the number and types of the same or similar equipment or systems currently in the County's inventory
 - b. justification for the need to standardize the good/service
 - c. operational advantages, if any, that the desired equipment/system has over comparable models, why these capabilities are essential maintenance advantages, if any, that the desired equipment/system has over comparable models.
 - d. Factors that should be considered include ease of maintenance; current skills of maintenance personnel; costs of additional training if another system or different equipment is procured; and/or existing parts inventory.
- D. Additional unanticipated commodities or services are needed to complete an ongoing task.

14.3 Single Source. In order for a vendor to be deemed a single source, the department must provide a justification that:

- A. No other source can meet the County's requirements (a specific reason must be cited); or
- B. the commodity or services may be available from more than one source; but there are advantages to the County for choosing that vendor such as qualifications, past experience, uniqueness, location or timeliness, as compared to other vendors that may provide the commodity or services.

The Purchasing Manager shall review and approve single source purchase requests up to \$35,000.

For purchases of \$35,000 or more, a Notice of Intent to Single Source shall be posted on the County's third-party bidding site for at least 15 business days in accordance with Section 287.057(3)(c), Florida Statutes. The Notice will include a request that prospective vendors provide

information regarding their ability to supply the commodities or contractual services described. If it is determined after reviewing information received from prospective vendors that the commodities or contractual services are available only from a single source, a notice of the intended decision to enter a single-source purchase contract shall be posted.

SECTION 15 EMERGENCY PURCHASES

- 15.1** An emergency procurement is the purchase of goods, services, consultant services and/or construction made non-competitively because such acquisition is necessary to: 1) remedy or mitigate the harmful effects of any actual or threatened occurrence which may interfere with the conduct of normal operations or 2) remedy or correct a condition which may pose an imminent or existing threat to the health, safety or welfare of persons or property within the County.
- 15.2** Requests for emergency purchases must be made by the Department Director to the Purchasing Manager or as directed by the County Administrator. All requests must include justification of the emergency. Approval for other emergency purchases may be approved by the County Administrator on a case by case basis. Unless time does not permit, the end user must document that a good faith effort has been made in seeking other sources. Determination of an emergency is in the sole discretion of the Purchasing Manager or County Administrator.
- 15.3** In the event a State of Local Emergency is declared by the Board of County Commissioners and/or their designee, and Martin County is still operational, a requisition would be entered through the appropriate path for any purchase of goods or services. The date the Board declared the State of Local Emergency shall be entered in the order attachment for authorization of the purchase(s). If Martin County is not operational (i.e. power outage, loss of phone service, loss of internet service, etc.), Disaster Purchase Orders (DPO) will be used to procure the goods and/or services needed.
- 15.4** Following the declaration of an emergency or disaster area, Federal Disaster Assistance may be made available to Martin County. The Federal Emergency Management Agency (FEMA) is the Federal Agency charged with the responsibility of administering all Federal disaster assistance to State and Local governments. All purchases should be made from existing contracts, when applicable.
- A. Purchases made under an Emergency Declaration or related thereto shall follow the small purchase procedures set forth in 44 C.F.R. Section 13.36(d)(1), as amended from time to time.
 - B. FEMA grant programs are subject to the federal procurement rules found at 2 C.F.R. §§ 200.317 – 200.327, as amended from time to time.
 - C. FEMA applies Version 4 of the Public Assistance (PA) Program and Policy Guide (PAPPG) to incidents declared on or after June 1, 2020. Individuals who have responsibilities managing, implementing, or pertaining to the Public Assistance (PA) Program should refer to the PAPPG for PA policy and procedural requirements.

SECTION 16 FORMAL SOLICITATIONS (PURCHASES \$35,000 OR GREATER)

If the purchase price of commodities or contractual services exceeds the threshold amount provided in Section [287.017](#), Florida Statutes, for CATEGORY TWO (currently \$35,000), purchase of commodities or contractual services may not be made without receiving competitive sealed bids, competitive sealed proposals, or competitive sealed replies unless otherwise specified here within.

16.1 Specifications.

- A. Specifications shall be drafted in a manner to assure overall economy (without sacrificing quality) for the purposes intended and shall promote maximum free and open competition in satisfying the County's needs and shall not be unduly restrictive. Specifications shall not include proprietary, exclusionary, or discriminatory requirements. Specifications must include a clear and accurate description of the technical requirements for the material, product, or service to be procured in order to ensure that all potential bidders are given equal knowledge of the County's requirements. The policy enunciated in this Section applies to all specifications, including, but not limited to, those prepared by architects, engineers and all other contracted consultants.

- B. The reference to a brand name within the specifications is discouraged but may be done in accordance with this section.
 - 1. Brand Name or Equal Specifications are acceptable for use when:
 - a. No adequate design or performance specification or qualified products list is available;
 - b. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or the nature of the County's requirements makes use of a brand name or equal specification suitable for the procurement;
 - d. Use of a brand name or equal specification is in the County's best interest.
 - 2. Brand name or equal specifications shall seek to designate at least three "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
 - 3. When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of the brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and are not intended to limit or restrict competition.
 - 4. A vendor may propose equivalent products with any submittal, if it provides information on the proposed equivalent products in its submittal, including a cut illustration or other descriptive material which clearly indicate the quality and character of the equivalent products. Failure of the vendor to provide sufficient information on equivalent products in its submittal to allow an informed decision shall be grounds for disqualification.
 - 5. The Purchasing Manager may identify sources from which the designated brand name item/service can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable.

- C. In accordance with Section 218.80, Florida Statutes, all of the County's permits or fees

payable by the contractor to the County and a listing of all other governmental entities that may have additional permits or fees that may be generated by the project must be disclosed in the bidding documents. Such permits or fees may include, but are not limited to, license fees, permit fees, impact fees, or inspection fees.

1. In general, the County is to be responsible for the following:
 - a. All County issued permit fees (Development Review, Right-of-Way Use, Building, Electrical, etc.);
 - b. All general governing external agency resource permitting (SFWMD Environmental Resource Permit, FDEP Environmental Resource Permit, ACOE Nationwide, Building permits outside County jurisdiction, etc.)
 - c. If the County requires the Contractor to obtain the above referenced permits and pay the associated fees, the County must disclose the permit fee amount so the Contractor can invoice it.
 2. The Contractor is responsible for all means and methods related permitting to perform the project (NPDES, Dewatering, etc.), although the County may elect to be responsible for these types of permits. The Contractor shall also be responsible for any additional permits and fees outside the original project scope (even County issued permits) due to negligence or repairs needed during the project.
- D. Solicitations for initial work (conceptual phase, feasibility study, etc.) resulting in subsequent work (i.e. design, development, master planning) shall include language advising firms, “Performing initial work on this effort may preclude your firm from working on subsequent work which goes beyond the initial scope of work”.
- E. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.
- F. No project may be divided into more than one project for the purpose of evading the advertising requirements.

16.2 Cone of Silence.

- A. A Cone of Silence shall be established on all County competitive selection processes. The Cone of Silence prohibits any communication regarding a RFB, RFP, RFQ or other competitive solicitation between:
1. any bidder (or its agents or representatives); or
 2. any other entity with the potential for a financial interest in the award (or their respective agents or representatives); and
 3. any County Commissioner; or
 4. any County employee; or
 5. any selection committee member; or
 6. any other persons authorized to act on behalf of the Board including the County’s Architect, Engineer or their subconsultants regarding such competitive solicitation or to provide a recommendation to award a particular contract. All communication must be directed to the Purchasing Division.

- B. The Cone of Silence shall be in effect from the time of advertisement until terminated pursuant to Section 16.2.D. Each competitive solicitation shall provide notice of the Cone of Silence requirements.
- C. 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 County Administrator, County Attorney's Office, or Department Director or designee and the vendor.
 - 3. Any communication that is a part of the Bid Protest Procedure outlined in Section 19.
 - 4. Purchases made without competitive procurement as set forth in Section 9.7 and Small Purchases as set forth in Section 13.
- D. The Cone of Silence shall terminate when the Board or County employee authorized to act on behalf of the Board, awards or approves the contract, rejects all bids or responses or otherwise takes action to end the selection process.
- E. Violation of the Cone of Silence shall result in disqualification.

16.3 Advertisement.

- A. The Purchasing Division shall provide public notice, at least once, in the form of an advertisement in a newspaper of general circulation in the County pursuant to Section 255.0525, Florida Statutes:
 - 1. A minimum of twenty-one (21) calendar days prior to bid opening for construction projects exceeding \$200,000;
 - 2. A minimum of thirty (30) calendar days prior to bid opening for construction projects exceeding \$500,000;
 - 3. At least 5 calendar days prior to any scheduled pre-bid conference
 - 4. Solicitations for roadway construction shall be advertised at least once each week for two (2) consecutive weeks pursuant to Section 336.44, Florida Statutes.
- B. Public announcement of the need for professional services shall be made on the County's third-party bidding site for a minimum of fourteen (14) calendar days, for professional services for a project the basic construction cost of which is estimated to exceed \$325,000 or for a planning or study activity when the fee for professional services exceeds \$35,000, except in cases of valid public emergencies. The announcement shall include a general description of the project and how interested consultants may apply for consideration.
- C. All other solicitations shall be advertised by the Purchasing Division on the County's third-party bidding site for a minimum of fourteen (14) calendar days. Solicitations may also be transmitted to other third-party bidding sites at their request.
- D. Solicitations may be distributed directly to vendors in addition to the advertising and transmittal procedures above.

16.4 Disadvantaged, Minority, Women-owned, Small, and Veteran-owned Business and Local Vendor Preferences.

- A. All contractors are encouraged to assist Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), Women-owned Business Enterprises (WBE), Small Business Enterprises (SBE) and Veteran-owned Businesses (VOB) in doing business with the County. Each contractor assisting DBE, MBE, WBE, SBE, VOB will help to expand and develop the DBE, MBE, WBE, SBE, VOB business sectors within the County.
- B. The County shall make a good faith effort to:
1. Provide interested DBE, MBE, WBE, SBE, VOB with adequate information about the plans, specifications and requirements of contracts;
 2. Effectively use services and resources of available community organizations, contractors' groups, local, state, and federal business assistance officers, and other organizations that provide assistance in the recruitment and placement of DBE, MBE, WBE, SBE, VOB; and
 3. Provide written notice to a reasonable number of DBE, MBE, WBE, SBE, VOB that their interest in contracting with the County is being solicited in sufficient time to allow the DBE, MBE, WBE, SBE, VOB to participate effectively.
- C. For federally funded projects, the County shall take all necessary affirmative steps to assure that MBE, WBE, SBE, and labor surplus area firms are used when possible including but not limited to:
1. Placing MBE, WBE, and SBE on solicitation lists;
 2. Assuring that MBE, WBE, and SBE are solicited whenever they are potential sources;
 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBE, WBE, and SBE;
 4. Establishing delivery schedules, where the requirement permits, which encourage participation by MBE, WBE, and SBE;
 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
- D. Pursuant to 49 U.S.C. §5325(k) the County shall ensure that contractors working on a capital project funded by federal funds give a hiring preference, to the extent practicable, to veterans (as defined in 5 U.S. Code § 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This provision 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.
- E. **Local Vendor Preference.** Local preference will be given pursuant to Chapter 135, General Ordinances, Martin County Code, except when prohibited by federal or state law or other funding source restrictions.

16.5 Submittals.

- A. All submittals must be received (clocked-in) on or before the time and date indicated in the solicitation document or addenda. The preferred method of submittal is electronically through the County's third-party bidding site. The responsibility for submittals to the County

is solely that of the vendor. The County will not be responsible for delays in mail delivery or delays caused by any other occurrence including technical problems that may arise with e-bidding through a third-party website.

- B. If the location, date or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made via formal addendum and no less than five (5) days prior to the bid opening.
- C. Late submittals based solely on price will not be accepted. Late submittals, not based solely on price, received after the time and date stated in the solicitation may be accepted if such acceptance is in the best interest of the County.
- D. Offers by email, or telephone shall not be accepted. Faxed bids or proposals shall be rejected as non-responsive regardless of where the fax is received.

16.6 Bid Security (Bid Bond).

- A. Bid Security shall be required for construction bids over \$200,000 (over the small purchase threshold for federally funded projects), and other bids as determined by the Purchasing Manager, and must comply with the provisions of the established standard contract. Appropriateness shall be determined by the written standards for sureties developed and approved by the Purchasing Manager. Bid must be accompanied by the County's Bid Bond form, including those applicable to the sureties for the Statutory Payment Bond and Common Law Performance Bond (upload copy of bond if e-bidding).
- B. The bond shall be on the Bid Guaranty form provided by the County, with Power of Attorney Affidavit attached, in the amount of 5% of the total bid amount (base bid plus any and all alternates). Alternate bond forms will not be accepted. Failure to provide the County bond forms may deem the bid non-responsive.
- C. In lieu of the Bid Bond, the bid may be accompanied by a certified check of any national or state bank made payable to the Martin County Board of County Commissioners in the amount of 5% of the total bid amount. Any certified check that may be received will be returned to the unsuccessful bidder(s), within thirty (30) calendar days after the opening of the bids. Bid bonds will not be returned to the bidders unless specifically requested by the bidder. Any certified check of the successful bidder(s) will be returned to them promptly after the County and the successful bidder(s) have executed the Contract.
- D. Failure of the County to execute the Contract within ninety (90) days, or as otherwise indicated in the solicitation, after the date of the bid opening shall initiate release of the Bid Bond, certified check, cashier's check, treasurer's check or bank draft of lowest and second lowest bidders unless mutually agreed otherwise.
- E. Original hardcopy of the bid bond shall be submitted to the Purchasing Division within five (5) days of the bid opening (2401 SE Monterey Road, Stuart, FL 34996).

16.7 Selection Committees.

- A. When required:

1. Three (3) voting members are required for solicitations with an estimated value \$50,000 or less;
2. Five (5) voting members are required for solicitations with an estimated value over \$50,000.

B. Composition:

1. Members shall not include direct supervisors of other members;
2. One (1) member shall be from outside of the originating Department;
3. Members may be from outside of the organization (subject matter experts), but may not comprise the entire Selection Committee without prior approval from the County Administrator or designee;
4. Purchasing Division Representative (non-voting);
5. Members shall be approved by the County Administrator or designee through the AAR process;
6. Individuals with potential conflicts of interest shall not be included.

C. Meetings:

1. All meetings shall comply with Section 286.011, Florida Statutes;
2. Notification shall be published on the County's website at least two (2) calendar days prior to the meeting;
3. Meetings scheduled for the purpose of vendor presentations will not be noticed, and will be handled pursuant to Section 286.0113, Florida Statutes;
4. Official action of a Selection Committee must take place at a noticed public meeting.

D. Duties. Selection Committee Members shall:

1. Attend all Selection Committee meetings, in person, unless otherwise directed by the Purchasing Division;
2. Prior to any Selection Committee meeting, independently review all responsive submittals and determine whether a firm or individual is fully qualified to render the required service based on the criteria defined in the solicitation;
3. Provide independent scoring for each submittal and for all criteria defined in the solicitation unless otherwise directed by the Purchasing Division;
4. Provide verbal justification of independent scoring of submittals (pros and cons);
5. Review consensus scoring (average of independent scoring) and make a recommendation of:
 - a. no fewer than three (3) shortlisted vendors for the purpose of conducting discussions with vendors, if required, pursuant to Section 287.055, Florida Statutes, or as otherwise directed in the solicitation. Presentations may be requested from the shortlisted vendors; and
 - b. award to the number of vendors necessary to meet the County's needs for the solicitation.

16.8 Payment and Performance Bonds

- A. A Payment and Performance Bond shall be required for all construction bids of \$200,000 or more (\$100,000 or more for FTA/federally funded procurements).

- B. When a construction project is less than \$200,000, the County may require a Payment and Performance Bond.
- C. 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 set forth herein.
- D. Payment and Performance Bonds shall be on the form provided by the County and written through a licensed agency that fulfills the requirements of Section 287.0935, Florida Statutes. All Payment and Performance 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.
- E. Payment & Performance Bonds shall be recorded in the public records of Martin County. A certified copy of completed and recorded Bonds must be delivered to and accepted by the County's Purchasing Division prior to commencement of the Work. Bond premiums shall be paid by the Contractor.

16.9 Methods of Competitive Solicitation.

A. Request for Bid (RFB)

- 1. A RFB will be required for the procurement of goods and services with an annual value over the small purchase threshold where:
 - a. Complete, adequate and precise specifications of the needed product are available and can be described in an invitation to bid;
 - b. Two or more responsible bidders are willing and able to compete effectively;
 - c. The procurement lends itself to a firm, fixed price and/or cost is the only variable;
 - d. The successful bidder can be selected on the basis of price and price related factors listed in the RFB;
 - e. Discussions with one or more bidders after bids are submitted is expected to be unnecessary;
 - f. It is in the County's best interest to do so.
- 2. RFBs shall indicate that award will be to the lowest, responsive, responsible bidder(s) per Section 17.1.

B. Request for Proposal (RFP)

- 1. A RFP is appropriate when:
 - a. The procurement is described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present;
 - b. An uncertain number of sources is available;
 - c. The Contract award need not be based on price or price-related factors alone;
 - d. Discussions are expected with the offeror after receipt of proposals.

2. Staff may receive input from the Board on the scope of services for RFPs related to strategic goals or countywide objectives prior to advertisement of the RFP in order to provide direction to staff as to the intent of the RFP.
3. At a minimum the RFP shall include:
 - a. A request for specific and general information on how the Proposer will proceed with the project including written documentation of expertise and ability to perform the requested service;
 - b. A statement that award will be made to the firm whose proposal is most advantageous to the County with price and other factors considered that offer the best value to the County;
 - c. The criteria that will be used to select the number one ranked firm including the score that will be assigned to each criterion;
 - d. Specific instructions on how, when, and where the proposals shall be submitted including the date the proposal will be opened;
 - e. A requirement that the proposal be submitted as a sealed package;
 - f. A statement that the Board reserves the right to reject any non-responsive proposals or to reject all proposals if it is deemed by the Board to be in the best interest of the County.
4. RFPs shall indicate that award will be based on criteria outlined in the RFP per Section 17.1. Proposal options or alternates shall be considered in award if included in the RFP and if the County intends to award such options.
5. Source selection sheets shall include text that states, "By signing or electronically approving the consensus evaluation sheet, I certify that I have fully complied with the requirements of Section 12.02 of the Martin County Human Resource Manual as well as the requirements of Section 112.313, Fla. Stat. regarding conflict of interest related to this evaluation".
6. When it is impractical initially to prepare a purchase description to support an award based on price, the County may conduct multi-step sealed bidding, whereby an initial request for proposal is issued requesting the submission of un-priced offers, or information relating to the experience and capabilities of the prospective bidders, to be followed by request for bid limited to those bidders whose offers or experience and capabilities have been determined to be acceptable under the criteria set forth in the initial RFP.
7. The recommendation for award shall consider whether the proposal meets the standards of the RFP. Additional factors to be considered include whether the proposer has:
 - a. 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;
 - b. A satisfactory record of performance;
 - c. A satisfactory record of integrity;
 - d. The legal ability to contract with the County; and
 - e. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to, any licenses, permits, or organization papers required.

C. Request for Qualifications (RFQ)

1. A RFQ is appropriate when:

- a. Required by Section 287.055, Florida Statutes, the Consultant’s Competitive Negotiation Act (CCNA) for solicitation of Professional Services within the scope of the practice of architecture, professional engineering, landscape architecture, registered surveying or mapping as defined by Florida law. Selection of consultants for FTA and other federally funded projects shall be acquired in accordance with “The Brooks Act”.
 - b. The selection of a vendor is primarily based on qualifications.
 - c. Price shall not be included as an evaluation factor.
2. Staff may receive input from the Board on the scope of services for RFQs related to strategic goals or countywide objectives prior to advertisement of the RFQ in order to provide direction to staff as to the intent of the RFQ.
3. The following criteria will be established by the requesting Department and provided to the Purchasing Division prior to initiation of a RFQ:
 - a. Need (normally provided by the currently adopted Capital Improvement Plan (CIP));
 - b. Identification of the specific discipline required;
 - c. Name of the Departmental Project Manager;
 - d. A list of names recommended for the selection committee;
 - e. Scope of Services required for the project;
 - f. Grant information;
 - g. Budget information and accounts; and
 - h. Award criteria.
4. The RFQ at a minimum shall include:
 - a. A request for specific and general information on how the Proposer will proceed with the project including written documentation of expertise and ability to perform the requested service;
 - b. The criteria that will be used to select the number one ranked firm including the score that will be assigned to each criterion;
 - c. Specific instructions on how, when, and where the proposals shall be submitted including the date the proposal will be opened;
 - d. A requirement that the proposal be submitted as a sealed package;
 - e. A statement that the Proposer shall not include proposed compensation as part of the proposal;
 - f. A statement that the Board reserves the right to reject any non-responsive proposals or to reject all proposals if it is deemed by the Board to be in the best interest of the County.
5. Competitive Selection
 - a. A minimum of three (3) vendors deemed to be the most highly qualified to perform the required services shall be selected in order of preference.
 - b. In determining whether a vendor is qualified under CCNA, the following factors, at a minimum, must be considered:
 - i. the ability of the vendor’s professional personnel;
 - ii. whether the vendor is a certified minority business enterprise;
 - iii. past performance;
 - iv. willingness to meet time and budget requirements;
 - v. geographic location (for FTA/federally funded purchases geographic location may be a criterion only if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project);
 - vi. recent, current, and projected workloads of the firms;

- vii. the volume of work previously awarded to each firm by the agency;
 - viii. other criteria as set forth in the solicitation;
 - c. Selection criteria is established with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.
6. Competitive Negotiation.
- a. The Purchasing Manager shall approve initiating negotiations with the top ranked vendor and any subsequent formal termination of negotiations and initiation of negotiations with the next vendor.
 - b. The Purchasing Division, along with Departmental staff and the County Attorney's office, shall attempt to negotiate a contract with the top ranked vendor for professional services at compensation that is fair, competitive and reasonable.
 - c. If the County is unable to negotiate a satisfactory contract with the top ranked vendor, negotiations with that vendor shall be terminated and the negotiations with the next highest ranked vendor will proceed. If these negotiations are not successful, negotiations shall be terminated with the second vendor and attempted with the third high ranked vendor. If the County's negotiator is not successful in negotiating a satisfactory contract with any of the selected vendors, the County's negotiator may select additional vendors in the order of their qualifications and continue negotiations until an agreement is reached or may recommend that the County reject all proposals and may thereafter re-advertise for new proposals.

SECTION 17

CONTRACT AWARD AND FORM

17.1 Contract Award

A. Request for Bid (RFB)

1. A contract shall be awarded to the qualified, responsive and responsible bidder(s) who submits the lowest bid price. When a bidder is unable to provide goods and services at the awarded contract pricing and terms, the County may re-award to the next lowest, qualified, responsive and responsible bidder. Bid options or alternates shall be considered in award if included in the RFB and if the County intends to award such options.
 - a. The County may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the County even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.
2. For the purpose of award, the County will consider as the bid the correct summation of each unit price multiplied by the estimated quantities or the correct total of all line items in the case of lump sum bids. The County may award based on the basis of quantities included in the base bid or quantities included in the base bid plus bid

alternatives, if any, and/or number of days to complete, at the County's sole discretion.

B. Request for Proposal (RFP)

1. Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

C. Request for Qualifications (RFQ)

1. Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the County taking into consideration price and the evaluation factors set forth in the Request for Qualifications. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

D. The County shall at all times, except when expressly waived in writing, reserve the right to reject all submittals and re-advertise; or to elect not to proceed with approval of the County Administrator.

E. In the event only one responsive submittal is received, or the submittals received are over the County's budget for the project, the County reserves the right to award to the sole responsive vendor, negotiate with the sole responsive vendor, re-advertise the solicitation, with or without making changes to the evaluation factors, or elect not to proceed.

F. When awarding a contract, the County shall apply all Preferences pursuant to Section 16, as applicable.

G. When an acceptable contract has been negotiated, a recommendation for award of a contract shall be sent to the Purchasing Division via an AAR. Upon approval, the Purchasing Division will forward a Notice of Award to the successful firm notifying them of the award and requesting all insurance, bonding and contract requirements.

17.2. Contract Form. The County Attorney shall determine the form of contract documents. Standard legal documents shall be developed and maintained by the County Attorney. The approved standard legal documents may be used without additional legal review. A Department shall not modify the approved standard legal documents without the approval of the County Attorney's Office.

17.3 Continuing Contract.

- A. A continuing contract may be used for:
1. professional services in accordance with Section 287.055, Florida Statutes (CCNA);
 2. projects in which the estimated construction cost does not exceed the dollar threshold set forth in Section 255.20, Florida Statutes;

3. study activity if the fee for professional services for each individual study under the contract does not exceed the dollar threshold set forth in Section 255.20, Florida Statutes;
- B. Selection of continuing services vendors shall be the same as above except that the County may award more than one continuing contract for a particular service and rates will be negotiated for each individual task order or work order. Vendors providing professional services under continuing contracts shall not be required to bid against one another.
 - C. 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 funds shall not exceed five (5) years.
 - D. 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 by the County Administrator and in accordance with a written amendment to the Contract.
 - E. Task Orders should be utilized to assign specific work under continuing contracts for professional services. Services to be provided under any one Task Order must not exceed the dollar thresholds set forth in Sections 255.20 or 287.055, Florida Statutes, or as otherwise stated in the contract.
 1. The user Department shall obtain a proposal from a contracted vendor including costs based upon labor classifications, fully burdened rates, hours, material, other direct costs and indirect rates, and a copy of any subconsultant scope of work and fee proposal. If the contract was procured under CCNA, vendors must not be required to bid against each other.
 2. The Project Manager shall compare rates against those originally proposed in the vendor's continuing contract and prepare a task order which includes, at a minimum, the scope of services, cost, schedule, and a copy of any subconsultant scope of work and fee proposal for the task order. Rate comparison includes confirmation of subcontract upcharge as limited by the continuing contract.
 - F. Work Orders should be utilized to assign specific work under continuing services contracts for construction work. Work to be provided under any one Work Order must not exceed the dollar thresholds set forth in Section 255.20, Florida Statutes, or as otherwise stated in the contract.
 1. The user Department shall obtain a proposal from a contracted vendor including but not limited to quantities, quantity unit rates, equipment, equipment unit rates, man-hours, man-hour rates, other direct costs and indirect rates and a copy of any subcontractor scope of work and fee proposal.
 2. The Project Manager shall compare rates against those originally proposed in the vendor's continuing contract and prepare a work order which includes, at a minimum, the scope of services, cost, schedule, and a copy of any subcontractor scope of work and fee proposal for the work order. Rate comparison includes confirmation of subcontract upcharge as limited by the continuing contract.
 3. Work orders for specifically listed projects that exceed the dollar thresholds set forth in Section 255.20, Florida Statutes, must clearly match the scope of work for the project as included in the solicitation.

17.4 Design-Bid-Build and Design-Build.

- A. The design-bid-build procurement method requires separate contracts for design services and for construction.
 - 1. Design Services. Qualifications-based procurement procedures shall be used (RFQ), in compliance with applicable Federal, State and local law and regulations.
 - 2. Construction. Sealed bidding (RFB) shall be used for construction services.
- B. Use of design build or construction management project delivery systems requires Board approval and shall comply with Section 287.055, Florida Statutes. For federally funded projects, the County must comply with 49 U.S.C. §5325(d).

SECTION 18 REJECTION OF SUBMITTALS

18.1 All bids may be rejected only when:

- A. All bids exceed the budgeted amount; or
- B. There are no responsive bidders; or
- C. There are no responsible bidders; or
- D. The project is abandoned; or
- E. The specifications, scope and/or terms and conditions are substantially revised for rebidding; or
- F. There is an irregularity in the bid process; or
- G. It is in the County best interest to do so.

SECTION 19 BID PROTEST PROCEDURE

19.1 Any protest relating to the contents of a bid or proposal package must be made by a formal written protest within three (3) calendar days from the time the aggrieved person knew, or should have known, of the facts giving rise to the protest, in any case, at least twenty-four (24) hours prior to the bid opening. All such formal written protests must be filed with the Purchasing Division no later than 5:00 p.m. EST on the third day.

19.2 Any unsuccessful bidder (the “Appellant”) who is allegedly aggrieved in connection with the bid solicitation or the proposed award of a contract, task order or work assignment by the County, may file a formal written protest with the County provided the Appellant complies, as a condition precedent to consideration of such protest, with the following procedures:

- A. The formal written protest must be filed with the Purchasing Division, no later than 5:00 p.m. EST, within seven (7) calendar days after the Appellant is made aware of the intent to award the contract by e-mail or when the Purchasing Division posts the notice of recommendation or intent to award the contract on the County’s website and/or third party bidding website.
- B. If the Board or the County Administrator or designee chooses not to accept the recommendation of award and awards the contract to an alternate, a formal written protest may be filed, in accordance with this procedure by the entity originally recommended for

award no later than 5:00 p.m. EST, within seven (7) calendar days after the Purchasing Division posts the notice of award on the County's website and/or third party bidding website.

- C. The formal written protest shall contain, at a minimum, the following information:
 - 1. Bid Project identification and title,
 - 2. The name and address of the Appellant and the title or position of the person submitting the bid protest,
 - 3. A statement describing, in detail, all of the issues being protested and the reasons the award of the contract should not be made as proposed by the County,
 - 4. A statement describing in detail how the issues being protested adversely affect the Appellant's bid submitted to the County,
 - 5. A statement describing the relief sought by the Appellant, and
 - 6. Such other information as the Appellant deems to be material.

- D. The Appellant shall provide such additional information requested by the County, which it deems pertinent to the consideration of the protest. The formal written protest shall identify all of the issues and arguments which support the Appellant's claim that the award of the contract should not be made as proposed by the County, and any and all subsequent appeals of the decision rendered upon the protest shall be limited solely to the issues and arguments set forth therein and shall not include any new or additional issues or arguments.

- E. As a condition precedent to any consideration of the written protest, the Appellant must post with the County a security in the form of a cashier's check, certified check, or money order (the "Protest Security") made payable to the Martin County Board of County Commissioners ("Board"). The amount of the Protest Security shall be 5% of the Appellant's bid up to a maximum of \$25,000. For a solicitation for which no price is required or where the bid was for a percentage discount or markup, the Protest Security shall be \$5,000. The Purchasing Manager will deposit and hold the Protest Security until a final determination is made on the protest.

- F. With receipt of the formal written protest and the Protest Security, the Purchasing Manager will review the protest and, if the protest is not resolved by mutual agreement, render a decision. If the Appellant does not accept the decision of the County's Purchasing Manager, a formal appeal may be made to the County Administrator provided such appeal is requested in writing, no later than 5:00 p.m. EST, within three (3) business days of receipt by the Appellant of the decision by the Purchasing Manager.

- G. The County Administrator will review the protest and issue a final decision. If the County Administrator's decision is in favor of the Appellant on the written protest (which includes the decision to reject all of the bids), the full amount of the Protest Security will be returned to the Appellant. If the decision is not in favor the Appellant on the written protest, the County will return the Protest Security to the Appellant within thirty (30) days of the decision after deducting the expenses incurred by the County in processing the formal bid protest and appeal. No award will be made of the contract while a protest or appeal is pending before the County, unless the County Administrator deems the procurement to be an emergency.

- H. The County will not consider any appeal unless it complies with this procedure. Neither the County, nor its employees will be liable for any costs, expenses or damages incurred by the Appellant such as, but not limited to, attorney fees, loss of income, bid proposal preparation

costs or bid protest costs.

19.3 A formal written protest is considered filed with the County when the Purchasing Division receives it if delivered by hand delivery or email or when post marked if delivered by U.S. Postal or Express Mail. Accordingly, a protest is not timely filed unless it is received within the timeframe specified.

A. Formal written protests may be submitted via hand delivery, U.S. Postal Mail or express mail, or e-mail as follows:

1. Hand Delivery: Martin County Board of County Commissioners, Attn: Purchasing Division, 2401 SE Monterey Road, Stuart, FL 34996
2. U.S. Postal Mail or Express Mail: Martin County Board of County Commissioners, Attn: Purchasing Division, 2401 SE Monterey Road, Stuart, FL 34996
3. Email: pur_div@martin.fl.us

19.4 All communications by Appellant or anyone acting on behalf of Appellant regarding the bid protest must be directed to the Purchasing Manager or the County Attorney. Appellants and anyone acting on their behalf, are prohibited from attempts to influence, persuade, or promote a bid or proposal protest through any other channels or means, including but not limited to, contacting any County Commissioner, official, employee, advisory board member, or representative to discuss any matter relating in any way to the solicitation being protested. This restriction shall begin with the filing of the protest and end upon the final disposition of the protest. Failure to adhere to the prohibitions herein may result in the rejection of the protest without further consideration.

SECTION 20 AUTHORIZATION TO DEBAR VENDOR

The following is the procedure for the debarment of vendors. Debarment means that a vendor is prohibited from submitting bids or proposals to perform or otherwise contract with County.

20.1 Causes for Debarment.

- A. Entry of a plea of guilty, no contest or nolo contendere to or conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in performance of such contract.
- B. Entry of a plea of guilty, no contest or nolo contendere or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property, or any other offense indicating lack of business integrity of business honesty which currently, seriously, and directly affects responsibility as a County contractor.
- C. Entry of a plea of guilty, no contest or nolo contendere or conviction under state or federal anti-trust statutes arising out of submission of bids or proposals.
- D. Violation of provisions of contracts as follow:
 1. Failure without good cause to perform in accordance with specifications or within the time limits provided in the contract;
 2. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contract within the previous three (3) years, provided that

failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for Debarment;

3. Refusal to enter into a contract with the County by failing to provide bonds, insurance, or other required certificates within the time periods as specified in bid/RFP/RFQ response;
4. Refusal to accept a PO, agreement or contract, or to perform thereon provided such order was issued timely and in conformance with the offer received;
5. Presence of principals or corporate officers in the business or concern who were principals within another business at the time when the other business was suspended within the last three (3) years under the provisions of this section;
6. Violation of the ethical standards set forth in state law;
7. Providing anything of value, including but not limited to, a gift, loan, reward, promise of future employment, favor or service to any employee to influence the award of contract or purchase of items from a contract; or
8. Any other cause the Purchasing Manager determines to be so serious and compelling as to affect the credibility as a County vendor, including debarment by another government entity for any cause listed in this section.

20.2 Contractor/Consultant Evaluation Form. Upon completion of any services, the Department shall document exceptional or substandard contractor performance (available in MSWord Templates). The completed evaluation form shall be submitted to the vendor upon final payment and a copy provided to the Purchasing Division.

20.3 Recommended Decision. The Purchasing Manager shall issue a notice letter which advises a vendor that recommendation will be made to the County Administrator to debar. The notice shall state the reasons for the action taken and inform the vendor of its rights to an appeal to the County Administrator.

20.4 Appeals to County Administrator.

- A. Any person dissatisfied or aggrieved with the notification of the Purchasing Manager's determination regarding a debarment must, within ten (10) calendar days of such notification, appeal the determination in writing in accordance with the hearing procedures contained in the section.
- B. Upon receipt of the request for hearing, the County Administrator shall give all parties prior notice of a hearing date and time at least five (5) days before the hearing date. The vendor shall be given the opportunity at such hearing to demonstrate why the recommendation of the Purchasing Manager should be denied.
- C. The County Administrator shall render a written decision within thirty (30) days of the hearing. Any decision to debar a contractor shall be in effect for a period not to exceed three (3) years.

20.5 Appeals to the Board of County Commissioners. An aggrieved party may appeal the decision of the County Administrator to the Board. The appeal shall be filed within ten (10) days of the notification of the written decision by the County Administrator. The Board's decision to debar a person or business shall be final and conclusive unless the debarred person files a timely appeal of the Board's decision pursuant to the Florida Rules of Appellate Procedure.

20.6 Reinstatement. A person or corporation may be reinstated to do business with the County under the following conditions:

- A. Discovery of new and material evidence not previously available;
- B. Dismissal of indictment or reversal of conviction; or
- C. Bonafide change in ownership or management sufficient to justify a finding of present responsibility.

The request for reinstatement shall be forwarded in writing to the Purchasing Director. The County Administrator shall determine whether to reinstate based on written submission of evidence to the above referenced office, without further hearing. Upon consideration of the written submission and any recommendation from the Purchasing Manager, the County Administrator shall render the decision in writing within thirty (30) days from the receipt of a recommendation from the Purchasing Manager. The decision of the County Administrator may be appealed to the Board as provided in this Section.

SECTION 21 RECEIVING OF GOODS

21.1 Receiving and Inspection.

- A. It shall be the responsibility of each department to have an individual, immediately upon receipt of a product or service, to inspect that product or service to ensure that it meets the specifications as set forth in the PO. The person should inspect for proper quantities, proper quality, no damage and prompt delivery. The receiving person should have available a copy of the PO for verification purposes. Any deviations should be immediately documented and sent to the supplier and to Purchasing.
- B. Signing a delivery slip does not necessarily constitute acceptance of an order. Any problems with an order should be documented and reported to Purchasing as soon as possible. The requesting department will contact the vendor to resolve any and all issues. Time is of the essence when dealing with problems on an order. Failure to timely advise the vendor and/or freight carrier may limit remedies. If an item is delivered damaged, the receiving party has the responsibility to protect it and all packing materials from any further damage, and to make it available to the vendor and/or freight carrier for inspection.
- C. Materials, equipment or supplies shall be inspected upon receipt and, if possible, in the presence of the vendor or shipper and shall include the following:
 - 1. Verification of the correct quantities and units of issue
 - 2. Verification of PO number
 - 3. Verification of pricing
 - 4. Inspection for damage or defects
 - 5. Verification that all items meet the specifications or description defined in the PO
 - 6. Verification of correct vendor
 - 7. All packages shall be checked against the Bill of Lading
 - 8. Make note of any damage on the Bill of Lading and on the receiving copy of the PO

9. The signature shall be that of the person actually receiving and inspecting the materials.

If unable to perform the above, the notation "Subject to Inspection" shall be written on Bill of Lading.

- D. When goods, materials, or supplies either fail the inspection criteria or are damaged upon receipt, the receiving or requesting department shall immediately refuse the order. If the vendor or shipper is not on site, the receiving or requesting department shall contact the vendor to arrange shipment return and replacement. When a vendor has two deliveries refused, the department will coordinate corrective action with Purchasing.

- 21.2 Testing.** Any department or the Purchasing Division may request any testing necessary of samples submitted with bids and/or samples of deliveries to determine their quality and conformance with specifications. This testing may be conducted by the laboratory facilities of any agency of the County or of any outside laboratory. Sometimes where testing regularly is required (such as asphalt) the purchasing manager may request the services of an outside testing firm be placed under contract to conduct the testing.

SECTION 22 FIXED ASSETS INVENTORY

- 22.1** In accordance with Chapter 274, Florida Statutes, tangible personal property owned by the County including property under the custodianship of the Departments of the Board of County Commissioners, Clerk of Circuit Court, Property Appraiser, Supervisor of Elections and Tax Collector and properties leased by the County as outlined in individual leases, with a with a value or cost of \$5,000 or more, and a projected useful life of 1 year or more, shall be recorded in the County's financial system as property for inventory purposes.

Items with a value of \$1,000 or greater shall be deemed a fixed asset and affixed with a County inventory tag.

The Department and/or Constitutional Officer shall be responsible for notifying the Purchasing Division when purchasing a fixed asset so that the item may be affixed with a County inventory tag.

- 22.2 Annual Inventory.** Each Constitutional Officer and/or Department Director shall appoint a department custodian that will work with Purchasing Division staff to account for all fixed assets on an annual basis.

- 22.3 Disposal.** When a fixed asset is no longer needed or not working, a Fixed Asset Disposition form must be completed, signed and sent to the Purchasing Division. Technology related items such as computers, printers and peripherals must be authorized for disposal by the Information Technology Services (ITS) Chief Information Officer (CIO).

- A. Fixed assets shall not be discarded by the department custodian without permission from the Purchasing Manager. A police report shall be filed for all lost, stolen or missing fixed assets.

- B. Purchasing shall dispose of the surplus property in the following order of precedence below:

1. If the property has no value or the value does not exceed handling, storage and selling costs, the item may be sold, donated, recycled or discarded, as appropriate.

2. If value of the property exceeds handling, storage and selling costs, advertise the availability of the property first to the County, then for sale, competitively through the most appropriate medium.
3. If the property is offered for sale and no acceptable bids are received, the County may donate the item to a private, non-profit agency as defined in Section 273.01, Florida Statutes.
4. The Department Director may choose to use the item as a “trade-in” when purchasing new equipment if doing so is in the best interest of the County.
5. Martin County employees are prohibited from directly or indirectly purchasing County property through the surplus auction process.

22.4 Disposal of Property Purchased with Grant Funds. Proceeds from property purchased with grant funds shall be deposited in accordance with the requirements of the original grant agreement. Proceeds from disposal of property purchased with FTA funds in the amount of \$5,000 or greater shall be returned to the FTA.

22.5 Transfer. Fixed assets may be transferred from department to department through completion of a Fixed Asset Disposition form with approval of both the transferring and receiving Department Directors.

22.6 County health department property. In accordance with Section 274.11, Florida Statutes, property purchased by County health departments established pursuant to the provisions of chapter 154, whether purchased with federal, state or county funds, or any combination thereof, shall be vested in the Board of County Commissioners of the County where said county health department is located and shall be accounted for in accordance with the provisions of this chapter.

22.7 Transit Vehicles and Fixed Assets. Rolling stock, bus shelters, and other equipment used in the provision of public transit service shall be acquired and monitored in accordance with the Transit Vehicles and Fixed Asset policy. Questions concerning interpretation of the policy are to be referred to the Transit Administrator.

SECTION 23 SUPPLEMENTAL POLICIES & PROCEDURES FOR FEDERAL TRANSIT ADMINISTRATION (FTA) FUNDED PROCUREMENTS

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

23.2 Solicitation Prohibitions. Solicitation requirements may not contain features that unduly restrict competition including but not limited to:

- A. Imposing unreasonable business requirements/qualifications for bidders or offerors.
- B. Imposing unnecessary experience requirements for bidders and offerors.
- C. Using prequalification procedures (except in the case of qualification-based procurement for Architect/Engineer (A/E) services)

- D. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
- E. 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.
- F. Specifying only a “brand name” product without allowing offers of “an equal” product or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- G. Specifying in-state or local geographical preferences or evaluating bids or proposals in light of in-State or local geographic 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.
- H. 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.
- I. Taking any arbitrary action in the procurement process.

23.3 Pre-procurement

- A. The Procurement Decision Matrix (Exhibit A) shall be used to determine the most efficient and economic method of purchase.
- B. An independent cost estimate (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. The Statement of Work Template (Exhibit C) may be used to assist with the development scope of services for bidding.
- D. The Piggybacking Checklist (Exhibit D) shall be completed for all piggyback purchases. Vendor shall be checked through the System for Award Management (SAM) system and for Conflict of Interest prior to piggyback purchase.
- E. A Sole Source Justification Form (Exhibit E) and Cost Analysis (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.

23.4 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 (Exhibit F), Price Analysis (Exhibit G) and/or Fair and Reasonable Price Determination (Exhibit H) shall be completed prior to purchase as well as a Procurement Summary/Procurement Memorandum (Exhibit I). The County shall rely on FAR Part 31, Contract Cost Principals and Procedures when conducted analyses. Project costs must conform to applicable Federal cost principles 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 (14) day before the day set for receipt of bids.

23.5 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 (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 a bidder has:
 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; and
 6. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to, any licenses, permits, or organization papers required.
 7. Satisfactory status in the System for Award Management (SAM) system
 8. No conflict of interest. An organizational conflict of interest exists:

- because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
- if a contractor's objectivity in performing the contract work is or might be otherwise impaired; or
- if a contractor has an unfair competitive advantage.

23.6 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 Exhibit P shall be followed for all federally funded contracts.
2. The Procurement History File Checklist for FTA Procurements (Exhibit N) shall be used to ensure proper contract administration including but not limited to:
 - The executed contract and notice of award;
 - Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
 - Contract-required insurance documentation;
 - Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
 - Notice to proceed;
 - Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
 - Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
 - 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 (i.e., city council, board of directors, executive director) of the settlement amount;
 - Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
 - Documentation relating to contract closeout.

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

C. Time and Materials contracts shall only be allowed:

1. After determining that no other contract type is suitable,
2. If 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 Review Checklist (Exhibit M) shall be completed for all Contract Change Orders. All out-of-scope Contract Change Orders shall include:
 - 1. An independent estimate and cost analysis prepared by the Architect/Engineer or Project Manager,
 - 2. The contractor's proposal,
 - 3. Meeting minutes discussing 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 the adding on to the contracted quantities (base and option) as 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 requirement for competitive selection procedures applies 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 competition 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 public transportation or project purposes. An option is a 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.

23.7 Protest Procedures. The procedure outlined in Section 19 shall be followed. 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 FTA. The FTA shall be copied on all subsequent responses

to the protest and appeals filed in accordance with this Section.

- EXHIBIT A: Procurement Decision Matrix
- EXHIBIT B: Independent Cost Estimate
- EXHIBIT C: Statement of Work (SOW) Template
- EXHIBIT D: Piggybacking Checklist
- EXHIBIT E: Sole Source Justification Form
- EXHIBIT F: Cost Analysis Form
- EXHIBIT G: Price Analysis
- EXHIBIT H: Fair and Reasonable Price Determination
- EXHIBIT I: Procurement History / Procurement Memorandum
- EXHIBIT J: Responsibility Determination Form
- EXHIBIT K: Contract Clause Matrix
- EXHIBIT L: Federal Transit Administration (FTA) Required Contract Clauses
- EXHIBIT M: Change Order Review Checklist
- EXHIBIT N: Procurement History File Checklist for FTA Procurements
- EXHIBIT O: Procurement File Checklist
- EXHIBIT P: Contract Administration

**EXHIBIT A
PROCUREMENT DECISION MATRIX**

MICRO-PURCHASE

- \$10,000
- Multiple sources available

SIMPLIFIED ACQUISITION

- <\$35,000 (County threshold; FTA threshold is \$250,000; three quotes required)
- Complete and adequate specifications
- Multiple sources available
- Emergency/public exigency

COMPETITIVE PROCUREMENT/SEALED BID

- \$35,000 or greater (County threshold; FTA threshold is \$250,000)
- Complete and adequate specifications
- Multiple sources available
- Selection can be made based on price alone
- No discussion with bidders required after receipt of bids
- Not an emergency

SOLE SOURCE

- Approved by FTA
- OEM or custom item, or
- Only one source, or
- Competition inadequate after solicitation, or
- Emergency/public exigency

REQUEST FOR PROPOSALS

- Complete specifications not feasible
- Bidder input needed
- Two or more responsible bidders willing to compete
- Discussion needed with bidders after proposal
- Fixed price can be set after discussions

QUALIFICATIONS BASED SELECTION (ENGINEERS & ARCHITECTS) *

**Qualifications based procurement may not be used for non-A&E contracts*

**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.

A. Cost of Standard Items

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

B. Cost of Services, Repairs or Non-Standard Items

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 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
<ul style="list-style-type: none"> ▪ 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
<p>a) Transit Agency requires these products and/or services due to:</p> <p>b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:</p> <p>c) The completion of this work will help Transit Agency:</p>
Statement of Work Title: [Type text]
1.0 Project Background
<p>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.</p> <p>Short statement of the problem to be resolved</p> <p>Expected project duration</p> <p>Transit Agency organizational units and/or key individuals involved in managing the project</p> <p>Alternative solutions or implementation strategies evaluated</p> <p>a) Transit Agency requires these products and/or services due to:</p> <p>b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:</p> <p>c) The completion of this work will help Transit Agency:</p>
2.1 Results
<p>Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.</p>
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?		

WORKSHEET	YES	NO
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 JUSTIFICATION FORM

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

_____ The item is available only from a single source (sole source justification is attached).

_____ 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).

_____ After solicitation of a number of sources, competition is determined inadequate (record of source contacts 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).

Comments:

_____ Independent Estimate and Cost Analysis are attached.

Project Manager

Purchasing Manager

Date

Date

**EXHIBIT F
COST ANALYSIS FORM**

PAGE OF PGS

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 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 *)			Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
3. DIRECT LABOR	ESTIMATED HOURS	RATE/ HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
<i>TOTAL DIRECT LABOR</i>						
4. LABOR OVERHEAD OH Rate X BASE (labor total above) <i>TOTAL LABOR OVERHEAD</i>			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance

5. OTHER DIRECT COSTS A. SPECIAL TOOLING/EQUIPMENT <i>TOTAL SPECIAL TOOLING/EQUIPMENT</i> B. TRAVEL (1) TRANSPORTATION (2) PER DIEM OR SUBSISTENCE <i>TOTAL TRAVEL</i>	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
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)				
<i>8.SUBTOTAL ESTIMATED COST</i>				
9. CONTRACT FACILITIES CAPITAL AND COST				
OF MONEY				
<i>10. SUBTOTAL ESTIMATED COST</i>				
11. FEE OR PROFIT				
<i>12.TOTAL ESTIMATED COST AND FEE OR</i>				
<i>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 HISTORY
PROCUREMENT MEMORANDUM**

Date: _____ Completed By: _____

PO/Contract #: _____ Source of Funding: _____

Method of Procurement

Micro Purchase: Competitive RFP: Competitive Bid:

Small Purchase: A&E Services: Sole Source:

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 (attach 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 _____

_____.

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

EXHIBIT L:

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CONTRACT CLAUSES Federally Required and Other Model 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 (Non-procurement)
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

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

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

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 asset 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 with 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 affected 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 affected 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 compete

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 of 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 (NON-PROCUREMENT)

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 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** - The following requirements apply to each contract involving experimental, developmental or research work:

- 1) 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)

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.

**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	Category			Comment
	ND	D	N/A	
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

**MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS
PROCUREMENT HISTORY FILE CHECKLIST FOR FTA PROCUREMENTS**

CONTRACT NUMBER _____
CONTRACTOR NAME _____
CONTRACT AWARD DATE _____
CONTRACT AMOUNT _____
CONTRACT START DATE _____

		Responsible	In File	N/A
1	Procurement Request	Transit		
2	Funding/Accounting Code	Transit		
3	Independent Cost Estimate	Transit		
4	Statement of Work (spec)	Transit		
5	Procurement Plan & Timeline	Transit		
6	Single Source Justification	Transit		
7	Market Research Documents	Transit		
8	Bidders List	Purchasing		
9	Debarment verification – SAM Excluded Parties	Purchasing		
10	Source Selection Plan & Docs	Purchasing		
11	Solicitation & Amendments	Purchasing		
12	Pre-solicitation approvals	Transit		
13	Advertising	Purchasing		
14	Pre-bid or proposal conference notes/Q&A	Purchasing		
15	Bid/proposal & solicitation amendment ack	Purchasing		
16	"No bid" letters or offeror disqualification	Purchasing		
17	Cost or price analysis	Transit		
18	Negotiation memo	Transit		

19	Source selection report & related docs	Purchasing		
20	Contractor responsibility determination	Transit		
21	Required award approvals	Transit		
22	Pre-award: Buy America certification	Transit - Bus		
23	Pre-award: Federal Vehicle Manufacturer Safety Standard certification	Transit - Bus		
24	Pre-award: Bid spec compliance certification	Transit - Bus		
25	Notice of Intent to Award	Purchasing		
26	Protests	Purchasing		
27	Signed (conformed) contract including insurance & bonds	Purchasing		
28	Notice to Proceed	Transit		
29	Contract modifications	Purchasing		
30	Submittals	Transit		
31	Option exercises & related documents	Purchasing		
32	Contract data and reports	Transit		
33	Complaint & performance reports	Transit		
34	Documentation concerning pre or post award mistakes in bid	Purchasing		
35	Invoices/Vouchers	Transit		
36	Post-delivery: Buy America audit certification	Transit - Bus		
37	Post-delivery: FVMSS sticker inspection and compliance certification	Transit - Bus		
38	Post-delivery: Road test and inspection-Bid spec compliance certification	Transit - Bus		
39	Other Correspondence	All		
40	General Contract Correspondence	All		
41	Contract Close Out	Transit		

**EXHIBIT O
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 Federal Transit Administration (FTA) Funded Procurements

Cost/Price Analysis:

Responsible Staff: Procurement staff (or project manager for construction contracts)
Applicable to: Federal Transit Administration (FTA) 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:
- FAR Part 31, Contract Cost Principles and Procedures 3.3.16

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 \$10,000 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 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 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)

<p><i>Responsible Staff: Procurement staff (or project manager for construction contracts)</i> <i>Applicable To: Construction Bids funded by the Federal Transit Administration (FTA)</i></p>

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 Federal Transit Administration (FTA)-funded Purchases of \$10,000 or less

Purpose

To define and establish purchasing requirements for Goods or Services costing less than \$10,000 where Federal Transit Administration (FTA) 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 \$10,000 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 Federal Transit Administration (FTA)-funded Procurements between \$10,000 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.

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 Funded procurements 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. A Request for Bids (RFB), 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 RFB

The RFB 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 the Purchasing Division. 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 RFB, 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 RFB:

The County shall prepare advertisement synopsis for The Stuart News and full RFB 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 RFB

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 RFBs have been furnished. Before amending an RFB, 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 RFB 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 RFB has been issued and before the bids are opened. It should not be used as a substitute for amending a defective or ambiguous RFB.

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 RFB 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 RFB instructions to be considered “responsive”. Bids shall be submitted so that they will be received as designated in the RFB 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 RFB, 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 RFB. 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 RFB.

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 Division. 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.

PIGGYBACKING

Responsible Staff: Procurement staff, Transportation Manager
Applicable To: All Federal Transit Administration (FTA)-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 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 \$10,000</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

Martin 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 4220.1.F 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 Purchasing 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 required under this paragraph 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 Martin 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; Martin 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 Martin 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 marketplace 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.

The following references provide guidance in preparing cost or price analysis:

1. FTA's "Best Practices Procurement Manual," Chapter 5
(<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>)
2. Pricing Guide for FTA Grantees
(<https://www.transit.dot.gov/funding/procurement/third-party-procurement/pricing-guide-fta-grantees>)
3. FAR Part 31, Contract Cost Principles and Procedures
(<https://www.acquisition.gov/far/part-31>)

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 pre-award 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 pre-award 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 MPO 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 Martin 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 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 Real Property Manager and County Purchasing Manager, 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".