

# MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS



## PURCHASING MANUAL

**ADOPTED: OCTOBER 10, 2023**

**RESOLUTION NO. 23-10.1**

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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)**

An electronic approval process used 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.

### **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.

### **Construction Manager at Risk (CMAR)**

A project delivery system in which a Construction Manager, acting as the County's general Contractor, is contracted to advise the designer and builder and deliver a project within a guaranteed maximum price (GMP).

**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 and the Assistant County Administrators 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, who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an underrepresentation of commercial enterprises under the group's control, 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. An African American – a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin.
2. A Hispanic-American – a person of Spanish or Portuguese culture, with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

3. An Asian American – a person having origins in any of the original peoples 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, upon presentation of proper documentation thereof as established by rule of the Department of Management Services.
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 Chief Procurement Officer 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 Qualifications (RFQ)**

Qualifications-based selection of architectural and engineering (A&E) services under which the most appropriate professional or firm is selected based on qualifications such as knowledge, skill, experience, and other project-specific factors. Prices shall not be included as an evaluation factor. This process may be utilized for non-A&E services when qualifications-based selection is desired.

### **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.

The County shall not consider social, political, or ideological beliefs when evaluating prospective vendors nor give any preference to a vendor based on social, political, or ideological beliefs.

### **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 (Task) 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:

<b>BOARD OF COUNTY COMMISSIONERS</b>	<ul style="list-style-type: none"> <li>• all contracts valued at \$500,000 or greater;</li> <li>• change orders and amendments that meet the thresholds herein <b>and</b> increase the contract more than 10% of original contract value;</li> <li>• all contracts with terms greater than 5 years</li> </ul>
<b>COUNTY ADMINISTRATOR OR DESIGNEE</b>	<ul style="list-style-type: none"> <li>• all contracts valued at \$499,999.99 or less;</li> <li>• change orders and amendments that meet the thresholds herein <b>and</b> increase the contract more than 10% of original contract value (not to exceed \$499,999.99)</li> </ul>
<b>CHIEF PROCUREMENT OFFICER OR DESIGNEE</b>	<ul style="list-style-type: none"> <li>• Contracts delegated by the County Administrator or designee</li> <li>• Contract amendments for scope of service/work changes</li> <li>• Contract renewals</li> <li>• Novation Agreements</li> <li>• Authorization of Contract Rights</li> </ul>
<b>DEPARTMENT DIRECTOR OR DESIGNEE</b>	<ul style="list-style-type: none"> <li>• Work orders and task orders under previously approved continuing services contracts;</li> <li>• Payments under previously approved contracts up to dollar limits established by the Department on the invoice payment authorization form</li> </ul>

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 prior to issuance of a PO or approval of use of a 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: July 2023), the County's officers and employees shall not solicit or accept any gift, gratuity, favor, entertainment or loan or any other items of monetary value from any organization, business firm, or person who has or is seeking to obtain business from Martin County Government or whose interests may be affected by the employee's performance or non-performance of official duties.

## **SECTION 7 PURCHASING DIVISION**

- 7.1 General.** The Purchasing Division is headed by the Chief Procurement Officer established in the Administration Department, as designated by the County Administrator. The goals of the Purchasing Division and the responsibilities of the Chief Procurement Officer 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. US mail processing;
  - 11. Fixed asset inventory control; and
  - 12. Contract management.

**7.3 Procurement Files.**

- A. 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 Chief Procurement Officer.

**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 business days for construction services (where invoices are approved by a third-party); and
  - C. 20 business 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 Chief Procurement Officer, 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 Chief Procurement Officer. 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 Chief Procurement Officer.

### **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.

### **9.8 Dispute Resolution Procedure.**

- A. Pursuant to Florida Statutes § 218.76, the County has established a procedure to resolve payment disputes.
- B. When a Vendor submits an improper invoice, the County's Chief Procurement Officer, or his/her designee, shall, within ten (10) days of receipt of the invoice, notify the Contractor that the invoice is improper and indicate what corrective action on the part of the Contractor is needed to correct any error(s) in the invoice.
- C. At any time that a payment dispute arises between the County and a Contractor, the dispute shall be brought before the County Administrator, or his/her designee, upon written request. Each side shall be given up to fifteen (15) minutes to present their respective positions and evidence to the County Administrator or his/her designee in support of their position. The County Administrator or his/her designee may extend the time limit upon request. Each side may present written position statements on the dispute. The County Administrator or his/her designee shall render a final decision in writing.
- D. The proceedings to resolve the dispute shall be commenced no later than forty-five (45) days from the date that the proper invoice was received by the County. In addition, the proceedings shall be concluded by final decision of the County

Administrator or his/her designee within sixty (60) days after the payment request or proper invoice was received by the County.

- E. If the dispute is resolved in favor of the County, interest shall begin to accrue fifteen (15) days after the County Administrator's or his her/designee's final decision. If the dispute is resolved in favor of the Contractor, then interest shall begin to accrue as of the original date the payment became due.

## **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** 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.
- 10.4** 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. 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.

D. 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](http://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 \$34,999.99 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.
- F. All goods shall be shipped Free on Board (FOB) Destination unless otherwise agreed upon by Vendor and County prior to purchase.

**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 Chief Procurement Officer, 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, unless waived by County Administrator or designee, 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 or single source purchase per Section 14.2 or 14.3. The justification for sole or 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 or 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 complete the Sole Source Justification Form and provide the appropriate supporting 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 Chief Procurement Officer, 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 Chief Procurement Officer 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 Chief Procurement Officer 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 Chief Procurement Officer 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 bid submittal will be considered on the basis of the specified material and equipment provided in the Contract Documents, Plans, and Technical Specifications. A Prime Contractor/Bidder may propose substitution (also known as an “approved equivalent or equal” item) materials, products, equipment, or suppliers that meets or exceeds the specifications as provided and shall be approved by the Engineer of Record prior to acceptance as a substitution.
  - a. Proposed substitutions shall be submitted by the Prime Contractor/Bidder a minimum of (14) calendar days prior to the bid due date and shall include supportive information in the form of the manufacturer’s printed literature or brochures, sketches, diagrams, and complete specifications adhering to the intent of the design character, quality, and loading capacities.
  - b. The substitution must be accompanied with an explanation in detail of how it will maintain and complement the complete design without any need for revisions. Any additional costs, including design and construction modifications, not anticipated by the Contractor as a result of the substitution or equivalent item shall be the Contractor’s responsibility.

All approved substitutions shall be posted for approval to all bidders a minimum of (5) calendar days prior to the bid due date. Any bids with substitutions that have not been approved by the County as specified herein shall be deemed non-responsive.

5. The Chief Procurement Officer 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". This requirement does not apply when the CMAR delivery method is used.
  - 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 five (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, DemandStar. 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 Chief Procurement Officer 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 Chief Procurement Officer. 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 five percent (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 five percent (5%) of the total bid amount. Any certified check that may be received will be returned to the unsuccessful bidder(s), within ninety (90) 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) calendar 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.
  - d. Procurement of CMAR Services as defined in Section 17.5.
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 or specification of a Construction Manager;
    - 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 Chief Procurement Officer 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.

3. The bidder to whom the award is made shall, within fourteen (14) calendar days after receipt of the Contract, execute the Contract on the form attached and return it to the County. The executed Contract should be returned to the County accompanied by the required certified and recorded Payment and Performance bonds as set forth herein. If the bidder fails to execute the Contract or provide the insurance and bonds within fourteen (14) calendar days, there shall be just cause for the annulment of the award and forfeiture of the Bid Guaranty to the County. Award may then be made to the next lowest, responsible, and responsive bidder or the work may be re-advertised 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 the design-build project delivery system 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).

#### **17.5 Construction Manager at Risk (CMAR)**

- A. Contract in which the County engages a Construction Manager to deliver a project within a Guaranteed Maximum Price (GMP), under which the Construction Manager is responsible for the successful, timely, and economical completion of the construction project.
- B. Construction Management firms may be procured on qualifications basis or through competitive proposals.
  - 1. If the County elects to use a qualifications-based selection process for Construction Management firms, it shall follow the procedures set forth in Section 16.9.C of this policy manual.
  - 2. If the County elects to use a competitive proposal selection process for Construction Management (CM) firms, the County shall follow a two-step

process, commencing with a qualifications-based shortlist following the procedures outlined in Section 16.9.C of this policy manual. The County shall thereafter issue a Request for Proposal (RFP) to the shortlisted CMs, setting forth the criteria and procedures by which all proposals will be evaluated. These criteria may include but are not limited to, price components (such as preconstruction services fees, general conditions, profit/fee and insurance rates), schedule, technical design aspects, preconstruction services plan, project approach, and small and minority business participation goals. The basis of award, whether it be price-driven (i.e., bids) or based on scoring of all criteria, shall be set forth in the RFP.

- C. Use of the CMAR project delivery system 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 require substantial revisions for purposes of re-bidding; 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 Chief Procurement Officer 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 Chief Procurement Officer 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 Chief Procurement Officer, 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 Chief Procurement Officer.

- 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 Chief Procurement Officer. 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.

**19.5** In computing time periods in determining deadlines to act within this section, the following rules apply:

- A. Begin counting from the next day that is not a Saturday, Sunday or County recognized Holiday;
- B. Count every day, including intermediate Saturdays, Sundays and County recognized Holidays;
- C. Include the last day of the period, but if the last day is a Saturday, Sunday or County recognized Holiday, the period continues to run until the end of the next day that is not

a Saturday, Sunday or County recognized Holiday;

- D. County recognized Holiday means any holiday that falls on a weekday in which the County has closed its administrative operations; and
- E. For business days, count all days except Saturdays, Sundays and County recognized Holidays

## **SECTION 20 AUTHORIZATION TO DEBAR VENDOR**

The Chief Procurement Officer may debar for cause the right of a vendor, contractor or subcontractor to be included in the renewal of an existing contract or any solicitation process; and any bid, proposal, submittal, or quote received from that vendor, contractor or subcontractor shall be rejected. 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. The debarment shall be permanent unless otherwise decided by the Chief Procurement Officer.

### **20.1 Causes for Debarment.**

- A. Charged with, convicted of, or entry of a plea of guilty, no contest or nolo contendere 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. If charges are dismissed or the vendor, contractor or subcontractor is found not guilty, the debarment shall be lifted automatically upon written notification and proof of final court disposition. However, nothing herein shall preclude the Chief Procurement Officer from imposing an additional debarment following said dismissal or finding of not guilty where the Chief Procurement Officer determines that debarment is otherwise supported by the Purchasing Ordinance and/or Manual.
- B. Charged with, convicted of, or 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 or business honesty which currently, seriously, and directly affects responsibility as a County contractor. If charges are dismissed or the vendor, contractor or subcontractor is found not guilty, the debarment shall be lifted automatically upon written notification and proof of final court disposition. However, nothing herein shall preclude the Chief Procurement Officer from imposing an additional debarment following said dismissal or finding of not guilty where the Chief Procurement Officer determines that debarment is otherwise supported by the Purchasing Ordinance and/or Manual.
- C. Charged with, convicted of, or 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. If charges are dismissed or the vendor, contractor or subcontractor is found not guilty, the debarment shall be lifted automatically upon written notification and proof of final court disposition. However, nothing herein shall preclude the Chief Procurement Officer from imposing an additional debarment following said dismissal or finding of not guilty where the Chief Procurement Officer determines that

debarment is otherwise supported by the Purchasing Ordinance and/or Manual.

- D. Any misrepresentation in connection with a solicitation or any misrepresentation of fact upon which the County has based a decision, including but not limited to a misrepresentation by a vendor, contractor or subcontractor on a small business application, or a local preference affidavit.
- E. Violation of a County Ordinance.
- F. Any egregious behavior, including repeated combative and disrespectful communications, directed at County's staff.
- G. 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. Failure to fully comply with the conditions, specifications or terms of a contract with the County, including but not limited to the unilateral withdrawal of a bid, quote, submittal, or proposal that has been received from the recommended awardee;
  - 3. 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;
  - 4. 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;
  - 5. 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;
  - 6. 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;
  - 7. Violation of the ethical standards set forth in state law;
  - 8. 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
  - 9. Any other cause the Chief Procurement Officer 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 performance, substandard contractor performance, or any other reason for debarment as noted above (utilizing the County's evaluation form template). 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 Chief Procurement Officer 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 Chief Procurement Officer'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 Chief Procurement Officer 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 debarment shall be in effect pending the result of the appeal. 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 affirm the debarment of any person or business shall be final and conclusive unless the debarred person/business 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 Chief Procurement Officer. 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 Chief Procurement Officer, the County Administrator shall render the decision in writing within thirty (30) days from the receipt of a recommendation from the Chief Procurement Officer. 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 Chief Procurement Officer 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 one (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.

- A. Should an asset be deemed missing, it shall be the responsibility of the Department custodian to attempt to locate the asset.
- B. If an asset cannot be located, a police report shall be filed by the Department custodian and submitted to the Purchasing Division.

- 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 Chief Procurement Officer. A police report shall be filed for all lost, stolen or missing fixed assets.
- B. The Purchasing Division 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 (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 Principles 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]
<b>1.0 Project Background</b>
<ul style="list-style-type: none"><li>▪ 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.</li><li>▪ Short statement of the problem to be resolved</li><li>▪ Expected project duration</li><li>▪ Transit Agency organizational units and/or key individuals involved in managing the project</li><li>▪ Alternative solutions or implementation strategies evaluated</li></ul>
a) Transit Agency requires these products and/or services due to:
b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:
c) The completion of this work will help Transit Agency:
Statement of Work Title: [Type text]
<b>1.0 Project Background</b>
Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought. Short statement of the problem to be resolved Expected project duration Transit Agency organizational units and/or key individuals involved in managing the project Alternative solutions or implementation strategies evaluated
a) Transit Agency requires these products and/or services due to:
b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:
c) The completion of this work will help Transit Agency:
<b>2.1 Results</b>
Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.
<b>2.2 Anticipated Benefits</b>

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.

<b>WORKSHEET</b>	<b>YES</b>	<b>NO</b>
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		

WORKSHEET	YES	NO
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:

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\_\_\_\_\_ Independent Estimate and Cost Analysis are attached.

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Chief Procurement Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT F  
COST ANALYSIS FORM**

<b>COST ANALYSIS SUMMARY</b> (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

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

5. OTHER DIRECT COSTS 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
<b>DETAIL DESCRIPTION OF COST ELEMENTS (continued)</b>	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
<i>TOTAL INDIVIDUAL CONSULTANT SERVICES</i>				
D. OTHER				
<i>TOTAL OTHER</i>				
E. <i>SUBTOTAL DIRECT COST AND OVERHEAD</i>				
6. GENERAL AND ADMINISTRATIVE (G&A)				
RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. <i>SUBTOTAL ESTIMATED COST</i>				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. <i>SUBTOTAL ESTIMATED COST</i>				
11. FEE OR PROFIT				
<b>12. TOTAL ESTIMATED COST AND FEE OR PROFIT</b>				
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:

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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.

	<b>Acceptable</b>	<b>Comment</b>
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

(This matrix does not apply to micro-purchases,<sup>1</sup> except that Davis Bacon requirements apply to all federal construction contracts over \$2,000)

Last revised: September 22, 2022

This Matrix is not meant to be all inclusive. Please review the specific funding source, as well as all clauses for applicability to the type of contract and flow down requirements.

	CLAUSE	TYPE OF PROCUREMENT				
		Professional Services / A&E	Operations / Management / Subrecipients	Rolling Stock Purchase	Construction* (see note)	Materials & Supplies
1.	No Federal government obligations to third parties by use of a disclaimer	All	All	All	All	All
2.	Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
3.	Access to Records	All	All	All	All	All
4.	Federal changes	All	All	All	All	All
5.	Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
6.	Incorporation of FTA Terms	All	All	All	All	All
7.	Energy Conservation	All	All	All	All	All
8.	Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
9.	Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
10.	Buy America			>\$150,000	>\$150,000	>\$150,000 (for steel, iron, manufactured products)
11.	Provisions for resolution of disputes, breaches, or other litigation	>\$150,000 (see Note)	>\$150,000 (see Note)	>\$150,000 (see Note)	>\$150,000 (see Note)	>\$150,000 (see Note)
12.	Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000

	CLAUSE	TYPE OF PROCUREMENT				
		<i>Professional Services / A&amp;E</i>	<i>Operations / Management / Subrecipients</i>	<i>Rolling Stock Purchase</i>	<i>Construction* (see note)</i>	<i>Materials &amp; Supplies</i>
13.	Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
14.	Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
15.	Cargo Preference			<i>Involving property that may be transported by ocean vessel</i>	<i>Involving property that may be transported by ocean vessel</i>	<i>Involving property that may be transported by ocean vessel</i>
16.	Fly America	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>	<i>Involving foreign transport or travel by air</i>
17.	Davis Bacon Act and Copeland Anti-Kickback Act				<i>Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, &gt;\$2,000 (including ferry vessels)</i>	
18.	Contract Work Hours & Safety Standards Act		<i>Contracts &gt;\$100,000 that that involve the employment of mechanics or laborers</i>	<i>Contracts &gt;\$100,000 that that involve the employment of mechanics or laborers</i>	<i>Contracts &gt;\$100,000 that that involve the employment of mechanics or laborers (including ferry vessels)</i>	
19.	Bonding				<i>&gt;\$250,000 (including ferry vessels) or as determined by the Authority and the federal awarding agency.</i>	
20.	Seismic Safety	<i>A&amp;E for new buildings &amp; additions</i>			<i>New buildings &amp; additions</i>	
21.	Public Transportation Employee Protective Arrangements		<i>FTA programs involving public transportation operations funded with 5307-5312, and 5316</i>			

	CLAUSE	TYPE OF PROCUREMENT				
		<i>Professional Services / A&amp;E</i>	<i>Operations / Management / Subrecipients</i>	<i>Rolling Stock Purchase</i>	<i>Construction* (see note)</i>	<i>Materials &amp; Supplies</i>
22.	Charter Service Operations		<i>All transit operations contracts involving FTA funding under 49 USC 5307, 5309, 5311 or 5316 funds</i>			
23.	School Bus Operations		<i>All transit operations contracts</i>			
24.	Drug and Alcohol Testing		<i>All transit operations contracts</i>			
25.	Patent and Rights in Data	<i>Research &amp; development</i>				
26.	Special DOL EEO clause for construction projects				<i>&gt;\$10,000</i>	
27.	Disadvantaged Business Enterprises (DBEs)	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
28.	Recycled Products (Solid Wastes)		<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>		<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>	<i>Contracts for items designated by EPA, when procuring \$10,000 or more per year</i>
29.	ADA Access	<i>A&amp;E</i>	<i>All</i>	<i>All</i>	<i>All</i>	
30.	Veterans Preference	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
31.	Motor Carrier Safety	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
32.	Safe Operation of Motor Vehicles	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
33.	Protection of Sensitive and Personally Identifiable Information	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
34.	Trafficking in Persons	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>

	CLAUSE	TYPE OF PROCUREMENT				
		<i>Professional Services / A&amp;E</i>	<i>Operations / Management / Subrecipients</i>	<i>Rolling Stock Purchase</i>	<i>Construction* (see note)</i>	<i>Materials &amp; Supplies</i>
35.	Tax Liability and Recent Felony Convictions	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
36.	Construction Site Safety				<i>All</i>	
37.	Domestic Preferences for Procurements	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
38.	Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>	<i>All</i>
39.	Bus Testing			<i>All, except minivans</i>		
40.	Pre-Award and Post-Delivery Audit Requirements			<i>All</i>		
41.	FTA Clauses Required when DBE threshold has been met	<i>If DBE threshold has been met</i>	<i>If DBE threshold has been met</i>	<i>If DBE threshold has been met</i>	<i>If DBE threshold has been met</i>	<i>If DBE threshold has been met</i>
42.	Representation Regarding Certain Telecommunication and Video Surveillance Services or Equipment					

<sup>1</sup> Currently set at \$10,000. <sup>2</sup> CFR § 200.320.

\* Per 41 CFR Part 60- 1.3, *Construction work* means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

## EXHIBIT L:

### FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CONTRACT CLAUSES Federally Required and Other Model Contract Clauses

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#### 1. No Federal Government Obligation to Third Parties.

Authority – FTA Master Agreement FY2020 at Section 3(l)

Applicability – all contracts

The Recipient 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 Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

#### 2. Program Fraud and False or Fraudulent Statements and Related Acts.

Authority – 49 U.S.C. § 5323(l) (1), 31 U.S.C. §§ 3801-3812, 18 U.S.C. § 1001 and 49 C.F.R. part 31, FTA Master Agreement at Section 39(b)(2).

Applicability – all contracts

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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Project is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on any project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs regardless of whether the project is related to this Contract or another agreement with FTA, and also applies to subcontractors at any tier. "Knowledge," as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change.

The Contractor agrees to include the above 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.

Flow Down Requirements – The Program Fraud clause extends to all contractors and their subcontracts at every tier who make, present, or submit covered claims and statements.

### **3. Access to Records and Reports.**

Authority - 49 U.S.C. § 5325(g), 2 C.F.R. § 200.333 and 49 C.F.R. part 633, 49 CFR part 625, 49 CFR part 630, FTA Master Agreement FY2020 at Sections 8(c)(1) and 20.

Applicability – all contracts

- a. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor is notified that the Authority may be subject to the Single Audit Act, set forth in 2 CFR Part 200, Subpart F – Audit Requirements, as amended.

- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.
- e. Contractor agrees to comply with FTA regulations, "Transit Asset Management; National Transit Database," 49 C.F.R. parts 625 and 630, as applicable, and follow applicable federal guidance.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

#### **4. Access to Records and Reports.**

Authority – 49 U.S.C. § 5325(g), 2 C.F.R. § 200.333 and 49 C.F.R. part 633, 49 CFR part 625, 49 CFR part 630, FTA Master Agreement FY2020 at Sections 8(c)(1) and 20.

Applicability – all contracts

- a. Record Retention. The Contractor will retain and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor is notified that the Authority may be subject to the Single Audit Act, set forth in 2 CFR Part 200, Subpart F – Audit Requirements, as amended.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.
- e. Contractor agrees to comply with FTA regulations, "Transit Asset Management; National Transit Database," 49 C.F.R. parts 625 and 630, as applicable, and follow applicable federal guidance.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

#### **5. Civil Rights (Title VI, EEO, ADA).**

Authority – Appendix II to Part 200, FTA Master Agreement FY2020 at Section 12(b)-(d), FTA Best Procurement Practices Manual.

Applicability – all contracts

The MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS is an Equal Opportunity Employer. As such, the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor

agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the Authority shall impose such contract sanctions as it, the FTA, FDOT or the U.S. DOT may determine to be appropriate, including, but not limited to: withholding of payments to the Contractor under the Contract until the Contractor complies and/or cancellation, termination or suspension of the Contract, in whole or in part.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier. In all solicitations made by the Contractor and all subcontractors, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, age, disability, or family status and that these same obligations extend to any subcontractor, supplier or lessor.

## **6. Incorporation of Federal Transit Administration (FTA) Terms.**

Authority – FTA Master Agreement (25) at Section 3(i)(5)

Applicability – all contracts

All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F and the Super Circular 2 CFR Part 200, 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 State requests, which would cause the State to be in violation of the FTA terms and conditions.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

## **7. Energy Conservation.**

Authority – 42 U.S.C. 6321 et seq. and 49 C.F.R. part 622, subpart C

Applicability – all contracts

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

## **8. Termination Provisions.**

Authority – 2 C.F.R. § 200.339 and 2 C.F.R. part 200, Appendix II (B), FTA Master Agreement at Section 16(d)(2)

Applicability – all contracts

For all contracts in excess of \$10,000, termination provisions are referenced in Section IV. Term of Contract and Termination of the Contract under Section IV of this solicitation package. These termination provisions address termination for cause and for convenience by the non-federal entity and includes the manner by which it will be affected and the basis for settlement.

Flow Down Requirements – none.

## **9. Government-Wide Debarment and Suspension.**

Authority – 2 C.F.R. part 180, 2 C.F.R. § 180.300, 2 C.F.R part 1200, 2 C.F.R. § 200.213, 2 C.F.R. part 200 Appendix II (I), Executive Order 12549 and Executive Order 12689, FTA Master Agreement FY2020 at Section 4(h), FTA Best Procurement Practices Manual

Applicability – All contracts over \$25,000

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a. Debarred from participation in any federally assisted Award;
- b. Suspended from participation in any federally assisted Award;
- c. Proposed for debarment from participation in any federally assisted Award;
- d. Declared ineligible to participate in any federally assisted Award;
- e. Voluntarily excluded from participation in any federally assisted Award; or
- f. Disqualified from participation in any federally assisted Award.

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

The certification in this clause is a material representation of fact relied upon by the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS. If it is later determined by the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS that the bidder or Bidder knowingly rendered an erroneous certification, in addition to remedies available to the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or Bidder agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Flow Down Requirements – Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

## **10. Buy America Requirements.**

Authority – 49 U.S.C. 5323(j) and 49 C.F.R. part 661 (49 C.F.R. § 661.13(b) and 49 C.F.R. § 661.6), FTA Master Agreement FY2020 at Sections 3(h) and 16(d)(1), FTA Best Procurement Practices Manual

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock valued at more than \$150,000. Work orders and small purchases of less than one hundred fifty thousand dollars (\$150,000.00) made with capital, operating, or planning funds are waived from Buy America requirements.

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 all 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. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The Bidder must submit to MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS the appropriate Buy America certification below with its Bid. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

The MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS presumes that any Contractor who submitted such certificate is complying with the Buy America provisions. A false certification is a criminal act in violation of 18 U.S.C. § 1001. A Contractor who certifies that it will comply with the applicable Buy America requirement is bound by its original certification (in the case of a sealed bidding procurement) or the certification it submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of its final offer. Where a Contractor certifies that it will comply with Buy America requirements, the Contractor is not eligible for a waiver of those requirements. The MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS reserves the right to request additional information, and/or to conduct both pre-award and post-award audits to ensure that the Contractor is in compliance with Buy America requirements.

In addition to the aforementioned Buy America Requirements, the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. No. 117-58 that includes the Build America,

Buy America Act (“the Act”) Pub. L. No. 117-58, §§ 70901-58, specifically §70914 of the Act, requires the following Buy America preference:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufacturer products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufacturer product that are mined, produced or manufactured in the United States is greater than 55 percent (55%) of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established in applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States (IIJA §70912(2) and (6)(B)(ii)).

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

### *Definitions*

“Construction materials” include an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives – that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Flow Down Requirements – 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.

## **11. Provisions for resolution of disputes, breaches, or other litigation.**

Authority – FTA Master Agreement FY2020 at Section 39(b)(1)-(2).

Applicability – all contracts

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the Authority. The Contractor must include a similar notification requirement in its subcontracts at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.

Flow Down Requirements – The Contractor must include a similar notification requirement in its subcontracts at every tier for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

## **12. Lobbying Restrictions.**

Authority – 31 U.S.C. § 1352, 2 C.F.R. § 200.450, 2 C.F.R. part 200 appendix II (I) and 49 C.F.R. part 20, appendix A, FTA Master Agreement FY2020 at Section 4(c)

Applicability – All contracts over \$100,000

- 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.

- B. The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5). 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 clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Flow Down Requirements – The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

### **13. Clean Air.**

Authority – 42 U.S.C. 7401–7671q and FTA Master Agreement FY2020 at Section 16(d)(7)

Applicability – All contracts over \$150,000

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

Flow Down Requirements – The Clean Air Act requirements flow down to all subcontracts over \$150,000 at every tier.

### **14. Clean Water.**

Authority – 33 U.S.C. 1251–1388, the Federal Water Pollution Control Act 33 U.S.C. 1251-1387, as amended, FTA Master Agreement FY2020 at Section 16(d)(7)

Applicability – All contracts over \$150,000

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

other requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Flow Down Requirements – The Clean Water requirements flow down to all subcontracts over \$150,000 at every tier.

## **15. Cargo Preference - Use of United States-Flag Vessels.**

Authority – 46 U.S.C. § 55305 and 46 C.F.R. part 381.7, FTA Master Agreement FY2020 at Section 15(b), FTA C 4220.1F at Appendix D

Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels.

Contractor shall: (a) use privately owned US-Flag commercial vessels to ship at least 50% 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 US flag commercial vessels; (b) furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill- of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); (c) include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

Flow Down Requirements – The Cargo Preference requirements flow down to all subcontracts involved with the transport of equipment, material, or commodities by ocean vessel.

## **16. Fly America.**

Authority – 49 U.S.C. § 40118, 41 C.F.R. part 301-10 and 48 C.F.R. part 47.4, FTA Master Agreement FY2020 at Section 15(c), FTA C 4220.1F at Appendix D

Applicability – All contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S.

A. Definitions. As used in this clause –

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.  
“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- C. If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

\_\_\_\_\_  
(End of Statement)

- E. The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

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.

**17. Davis-Bacon and Copeland Anti-Kickback Acts.**

Authority – Appendix II to Part 200, 49 U.S.C. § 5333(a), 40 U.S.C. §§ 3141 – 3148, 29 C.F.R. part 5, 18 U.S.C. § 874, and 29 C.F.R. part 5 (29 C.F.R. § 5.5), 29 C.F.R. § 3.1 and 3.11, 18 U.S.C. § 874, 40 U.S.C. § 3145, FTA Master Agreement FY2020 at Section 16(d)(4), FTA C 4220.1F at Appendix D

Applicability – Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000.

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to

laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

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 (write in the name of the Federal agency) 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. 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.

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.

Flow Down Requirements – These requirements extend to all third-party contractors and their subcontracts at every tier and subrecipients and their subcontracts at every tier.

## **18. Contract Work Hours and Safety Standards Act.**

Authority – Appendix II to Part 200, 40 U.S.C. §§ 3701-3708 and 29 C.F.R. part 1926, FTA Master Agreement FY2020 at Section 16(d)(5), FTA C 4220.1F at Appendix D

Applicability – Contracts over \$100,000 that involve the employment of mechanics or laborers.

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is

permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause 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 this clause.

The FTA 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 this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

### **Contract Work Hours and Safety Standards for Awards Not Involving Construction**

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such

employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

## **19. Bonding.**

Authority – 2 CFR 200.325, FTA Master Agreement FY2020 at Section 16(n), FTA C 4220.1F at Appendix D

Applicability – For all FTA Funded construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold (currently \$250,000), the federal awarding agency may accept the bonding policy and requirements of MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS if the federal awarding agency has made a determination that the federal interest is adequately protected.

As per Section I Bonds & Insurance, in this solicitation package, a Bid Security in the amount of five percent (5%) of the total Bid price is required. The Contract, if awarded, shall require a Performance Bond and Payment Bond equal to 100% of the contract price from the awarded Contractor. Specific bonding and insurance requirements are set forth in the Solicitation package. Insurance shall be written by an insurer who holds a current Certificate of Authority pursuant to Chapter 624, Florida Statutes, and who has a most recently published rating by A.M. Best & Company of “A” or better.

## **20. Seismic Safety.**

Authority – 42 U.S.C. 7701 et seq., 49 C.F.R. § 41.117 and Executive Order (E.O.) 12699, FTA C 4220.1F at Appendix D

Applicability – Design and construction of new buildings and additions to existing buildings.

Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Flow Down Requirements – 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.

## **21. Public Transportation Employee Protective Arrangements.**

Authority – 49 U.S.C. § 5333(b) (“13(c)”) and 29 C.F.R. part 215, FTA Master Agreement FY2020 at Section 24(d)

Applicability – Each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- A. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- B. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- C. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

## **22. Charter Service Operations.**

Authority – 49 U.S.C. 5323(d) and (r) and 49 C.F.R. part 604, FTA Master Agreement FY2020 at Section 28

Applicability – all transit operations contracts involving FTA funding under 49 USC 5307, 5309, 5311 or 5316 funds

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. 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 as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

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

### **23. School Bus Operations.**

Authority – 49 U.S.C. 5323(f) and 49 C.F.R. part 605, FTA Master Agreement FY2020 at Section 29

Applicability – Contracts for operating public transportation service.

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing. If Contractor violates this School Bus Agreement, FTA may:
  - i. Bar the Contractor from receiving Federal assistance for public transportation; or
  - ii. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

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

## **24. Drug and Alcohol Testing – Substance Abuse Requirements.**

Authority – 49 U.S.C. § 5331, 49 C.F.R. part 655 and 49 C.F.R. part 40.11(c), FTA Master Agreement FY2020 at Section 35, FTA C 4220.1F at Appendix D

Applicability – all transit operations contracts

Third party contractors who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer
5. who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49
6. U.S.C. § 5311 and contracts out such services;
7. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to comply with the following Federal substance abuse regulations:

- A. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182,
- B. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

The Contractor shall establish an anti-drug use and alcohol misuse program that includes the following:

- A. A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in §655.15. Each employer shall disseminate the policy consistent with the provisions of §655.16.
- B. An education and training program which meets the requirements of §655.14.
- C. A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.
- D. Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

Flow Down Requirements – The Substance Abuse requirements flow down to all third-party contractors at every tier who perform a safety-sensitive function for the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS.

## **25. Patent and Rights in Data.**

Authority – 2 C.F.R. part 200, Appendix II (F) and 37 C.F.R. §401.3, FTA Master Agreement FY2020 at Sections 17 and 18, FTA C 4220.1F at Appendix D

Applicability – 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 or to micro-purchases (less than \$3,500). If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

### **Intellectual Property Rights**

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Authority intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include

the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA 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. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. 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 below. 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.
  - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract 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 the 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 this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees 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 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. 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.
4. 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.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. 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.

Flow Down Requirements – The Patent Rights and Rights in Data requirements flow down to all third-party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

## **26. Special Department of Labor (DOL) EEO clause for Construction Projects.**

Authority – Executive Order 11246, 41 CFR § 60-1.4(b), FTA Master Agreement FY2020 at Section 12(d), FTA C 4220.1F at Appendix D

Applicability – Federal or federally assisted construction contracts and subcontracts in excess of \$10,000.

### **Additional Equal Opportunity Clauses for Construction Contracts.**

The equal opportunity clause published at 41 CFR 60-1.4(a) and published at 41 CFR 601.4(b) in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” are incorporated herein by reference. In addition to those clauses, the following applies to all construction contracts in excess of \$10,000.

*(full language follows):*

### **Equal Opportunity Clause**

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Flow Down Requirements – The Special Department of Labor (DOL) EEO clause for Construction Projects requirements flow down to all third-party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

## **27. Disadvantaged Business Enterprises (DBEs).**

Authority – 49 C.F.R. part 26, 49 C.F.R. § 26.13(b), FTA Master Agreement FY2020 at Section 12(e)(4)(ii), FTA C 4220.1F at Appendix D

Applicability – all contracts

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 and with section 1101(b) of SAFETEA LU, 23 U.S.C. §101.

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 FTA-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 MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph. The successful Bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

Flow Down Requirements – The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. Note that it is the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS' and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS to make sure it intervenes to monitor compliance. The onus for compliance is on the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS.

## **28. Recycled Products (Solid Wastes).**

Authority – 42 U.S.C. § 6962, 40 C.F.R. part 247, 2 C.F.R. part § 200.323, FTA Best Procurement Practices Manual, FTA C 4220.1F at Appendix D

Applicability – All contracts over \$10,000 for items designated by the EPA Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of

recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at:

[www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products)

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- A. Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- B. Fails to meet reasonable contract performance requirements; or
- C. Is only available at an unreasonable price.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

Flow Down Requirements – These requirements flow down to all applicable subcontracts at all tiers.

## **29. ADA Access.**

Authority – 49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101, FTA Master Agreement FY 2020 at Section 12(h), FTA C 4220.1F at Appendix D-3.

Applicability – all contracts

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of sections 503 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto: (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in

Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27; (3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. Part 1192 and 49 C.F.R. Part 38; (4) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35; (5) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36; (6) U.S. GSA regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19; (7) 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; (8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F; and (9) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and (10) Any implementing requirements FTA may issue.

Flow Down Requirements – This section applies to subcontractors at all tiers.

### **30. Veterans Preference.**

Authority – 49 USC § 5325(k), FTA Master Agreement FY 2020 at Section 16(u)

Applicability – all contracts

To the extent practicable, the Contractor agrees to give a hiring preference to veterans (as defined in 5 USC § 2108) who have the skills and abilities required to perform construction work required for a capital project supported with funds made available or appropriated for 49 USC chapter 53; provided, however, the Contractor may not give a hiring 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 a former employee.

Flow Down Requirements – None.

### **31. Motor Carrier Safety.**

Authority – FTA Master Agreement, FY2020 Section 33

Applicability – all contracts

Contractor agrees that it will comply with the applicable economic and insurance registration requirements of the:

1. U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, “Minimum Levels of Financial Responsibility for Motor Carriers,” 49 C.F.R. part 387, if it is engaged in operations requiring compliance with 49 C.F.R. part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone;
2. The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 C.F.R. part 387, and reduce the amount of insurance the Recipient must

obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311;

3. The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 C.F.R. parts 390 – 397, to the extent applicable; and
4. The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 C.F.R. part 383, and “State Compliance with Commercial Driver’s License,” 49 C.F.R. part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 C.F.R. part 382, and implementing federal guidance, to the extent applicable.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **32. Safe Operation of Motor Vehicles.**

Authority – FTA Master Agreement, FY2020 Section 34(a)(2) and (b)(iii)

Applicability – all contracts

Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS. Contractor is further encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement. Contractor is also encouraged to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **33. Protection of Sensitive and Personally Identifiable Information.**

Authority – FTA Master Agreement, FY2020 Section 36(c), US DOT Common Rules

Applicability – all contracts

Contractor must implement reasonable measures to safeguard protected personally identifiable information as well as any information that the FTA or pass-through entity designates as sensitive.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **34. Trafficking in Persons.**

Authority – Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); FTA Master Agreement FY 2020 at Section 4(f)

Applicability – all contracts

Contractor agrees that it and its employees that participate in the Contract, may not: Engage in severe forms of trafficking in persons during the period of time that the Contract is in effect, procure a commercial sex act during the period of time that the Contract is in effect, or Use forced labor in the performance of the Contract or subagreements thereunder. Violation of this provision provides MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS the right to unilaterally terminate the Contract.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **35. Federal Tax Liability and Recent Felony Convictions.**

Authority – 2019 Pub. L 116-6; FTA Master Agreement FY 2020 at Section 4(g), DOT Order 4200.6.

Applicability – all contracts

By submitting a bid or otherwise attempting to enter into a contract with the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, the undersigned Contractor certifies that it:

- A. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- B. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **36. Construction Site Safety.**

Authority – Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, 40 U.S.C. § 3701 et seq.; U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. part 1910; and “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926, and FTA Master Agreement FY 2020 at Section 24(a)(4)

Applicability – all construction contracts

The Contractor agrees that it will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in the Project or related activities, including the: (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq.; and (ii) U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. part 1910; and “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **37. Domestic Preferences for Procurements.**

Authority – 2 CFR part 200 Appendix II (L); 2 C.F.R. § 200.322

Applicability – all contracts

As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this Contract.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

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

Authority – 2 CFR part 200 Appendix II (K); 2 C.F.R. § 200.216

Applicability – all contracts

A. Definitions. As used in this clause—

*Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

*Covered foreign country* means The People’s Republic of China.

*Covered telecommunications equipment or services means—*

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
2. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology

Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

3. Telecommunications or video surveillance services provided by such entities or using such equipment; or
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means—

1. Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
2. Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-
  - i. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
  - ii. For reasons relating to regional stability or surreptitious listening;
3. Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
4. Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
5. Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
6. Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Interconnection arrangements* means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

*Reasonable inquiry* means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered

telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

*Roaming* means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

**B. Prohibition.**

1. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS from procuring or obtaining or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
2. Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

**C. Exceptions.** This clause does not prohibit contractors from providing—

1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

**D. Reporting requirement.** (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph

(d)(2) of this clause to the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS immediately.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

### **39. Bus Testing.**

Authority – 49 U.S.C. § 5318(e) and 49 C.F.R. part 665, FTA Master Agreement FY2020 at Section 16(m)

Applicability – Rolling stock, except minivans

Contractor shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR part 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended; 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 prior to the recipient's final acceptance of the first vehicle. (2) A manufacturer who releases a report under para. 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 the recipient's final acceptance of the first vehicle. If 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 US before Oct. 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.

Flow Down Requirements – none.

### **40. Pre-Award and Post-Delivery Audit Requirements.**

Authority – 49 U.S.C. 5323(m) and 49 C.F.R. part 663, FTA Master Agreement FY2020 at Section 16(m)

Applicability – Rolling stock

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

Flow Down Requirements – none.

### **41. Has Been FTA Clauses Required when DBE Threshold Met**

Applicability – all contracts where there is DBE Participation

**A. Contract Assurance.** 49 CFR Part 26.13

The Contractor, subrecipient or subcontractor 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 C.F.R. part 26.13 in the award and administration of DOT-assisted contracts. 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 the Authority deems appropriate.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

**B. Monitoring the Performance of other Program Participants.** 49 CFR Part 26.37

The MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS will monitor each DOT funded contract with DBE participation to ensure that all work committed to DBEs at contract award or subsequently (as a result of contract modification) is actually performed by the DBEs to which the work was committed. Site visit will be conducted periodically by staff. Contractor's Request for Payment forms will be monitored to ensure that DBEs are being paid in accordance to their signed agreements. All Prime Contractors will be required to self-report all payments received from the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS into the B2GNow (Contract Compliance Tracking System). This system tracks payments made to the prime contractor and all payments made by the prime to any subcontractors, to include DBEs, and the timeliness of those payments in accordance to MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS' Prompt Payment Clause.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

**C. Prompt Payment.** 49 CFR part 26.29(a)

Contractors are required to pay all subcontractors for satisfactory performance of their contracts within seven (7) business days from receipt of each payment from the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS. Failure to comply may result in future withholdings of prime contractor's reimbursements and/or other sanctions until the prime contractor ensure all subcontractors are being promptly paid for all work performed.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

**D. Return of Retainage.** 49 CFR Part 26.29(b), FY2019 FTA Procurement System Review Guide at P11.

Contractor is required to ensure prompt and full payment of retainage to all subcontractors within thirty (30 days) after the subcontractor's work is satisfactorily completed. Contractor is prohibited from holding retainage from subcontractors until the project is completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS. When MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS has made an

incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

**E. Termination for Convenience (DBE).** 49 CFR Part 26.53

No prime contractor will terminate for convenience a DBE subcontractor that was listed and agreed to perform a project task (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent from MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS' Diversity & Equity Program Office.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the prime contractor obtains written consent from MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS' Diversity & Equity Program Office; and unless the consent is provided the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Appropriate administrative remedies will be invoked to any Prime Contractor that terminates and/or removes a DBE firm/s for convenience. Those remedies may include requirement to pay terminated DBE firm/s; withholding of future payments and/or retainage; and/or disbarment from future consideration of project awards with the MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS.

Flow Down Requirements – This requirement flows down to all subcontracts at every tier.

**Other Federal Requirements**

The following requirements are not federal clauses, but apply to all contracts except micro-purchases (\$3,500 or less)

**Full and Open Competition.**

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

**Prohibition Against Exclusionary or Discriminatory Specifications.**

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

**Access Requirements for Persons with Disabilities.**

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

**Notification of Federal Participation.**

To the extent required by law, in the announcement of any third-party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third-party contract.

**Interest of Members or Delegates to Congress.**

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

**Ineligible Contractors and Subcontractors.**

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

**Compliance with Federal Regulations.**

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as 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.

**Real Property.**

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

**Access to Services for Persons with Limited English Proficiency.**

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

**Environmental Justice.**

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT

Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

### **Environmental Protections.**

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.S.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

### **Geographic Information and Related Spatial Data.**

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

### **Geographic Restrictions.**

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

### **In-State Bus Dealer Restrictions.**

The Recipient agrees that any state law requiring buses to be purchased through in-state dealers will not apply to purchases of vehicles supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, as provided in 49 U.S.C. § 5325(i).

### **Organizational Conflicts of Interest.**

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

### **Project Labor Agreements.**

As a condition of a third-party contract award, the Recipient may require the Third Party Contractor or Subcontractor to have an affiliation with a labor organization, such as a Project Labor Agreement, consistent with Executive Order No. 13502, "Use of Project Labor Agreements for Federal Construction Projects," February 6, 2009 (74 Fed. Reg. 6985).

**Force Account.**

The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

**FTA Technical Review.**

The Recipient agrees that FTA may review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper administration of the Underlying Agreement.

**Relationship of the Award to Third Party Contract Approval.**

The Recipient agrees that the terms of the Underlying Agreement do not, by themselves, constitute approval of any non-competitive third-party contract associated with the Award, unless FTA indicates otherwise in writing.

**Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only.**

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal OMB Title 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Uniform Guidance. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted, whereby records must be available for review or audit by appropriate officials of the cognizant Federal agency and the U.S. Governmental Accountability Office (GAO). Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the Florida Department of Transportation. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the Florida Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of the Uniform Guidance may result in suspension or termination of Federal award payments.

**Veterans Preference.**

As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a 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 a former employee.

**Safe Operation of Motor Vehicles.**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns,

leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

**Catalog of Federal Domestic Assistance (CFDA) Identification Number.**

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**CFDA number for the Federal Transportation Administration.**

Non-urbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Title 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as Uniform Guidance) agrees to separately identify the expenditures for Federal awards on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Uniform Guidance

**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				

<b>Other Comment</b>

**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** \_\_\_\_\_

		<b>Responsible</b>	<b>In File</b>	<b>N/A</b>
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)**

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

## **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**

<p><i>Responsible Staff: Procurement staff, Transportation Manager</i> <i>Applicable To: All Federal Transit Administration (FTA)-funded Procurements of equipment, materials, supplies, and services</i></p>
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## **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 4220.1F 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>
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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".