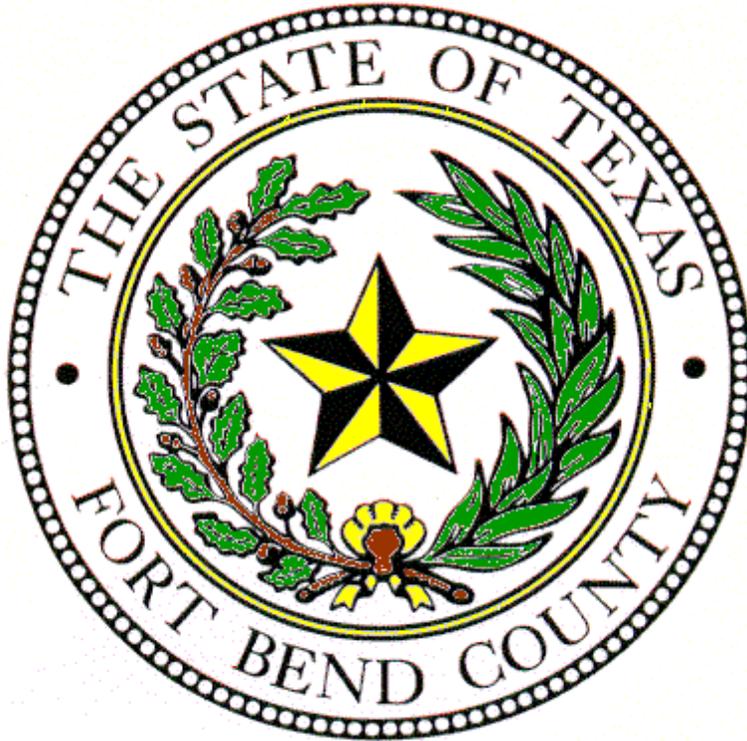


***FORT BEND COUNTY  
PURCHASING DEPARTMENT***



***GUIDELINES FOR FTA  
FUNDED PROCUREMENTS***

***12 NOVEMBER 2008***

***Amended: 07 July 2009  
2<sup>nd</sup> Amendment: 04 November 2014***

## **GUIDELINES FOR FTA FUNDED PROCUREMENTS**

In addition to the County's Purchasing Policies and Procedures, the following Guidelines shall apply to all procurements utilizing funds from the Federal Transit Administration.

### **1.0 Contract Administration System**

Fort Bend County Department of Public Transportation (recipient) has adopted these procedures to determine the type and amount of property and services it needs to acquire:

- 1.1 The property and services must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder.
- 1.2 The property and services must be necessary to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options it does not intend to use or whose use is unlikely).
- 1.3 Contracting is limited to current and reasonably expected public transportation needs, and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
- 1.4 When possible procurements will be consolidated or broken out to obtain a more economical purchase.
  - 1.4.1 It may be economically advantageous to enter into a joint procurement with others that have similar needs. Participation in a joint procurement, however, does not relieve any requirements and responsibilities for procuring the property or services.
  - 1.4.2 In other circumstances, breaking out small procurements may provide greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms, and women's business enterprises to participate.
  - 1.4.3 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.
  - 1.4.4 To obtain the best value, a review of lease versus purchase alternatives for acquiring property should be done and, if necessary, should obtain an analysis to determine the more economical alternative.
- 1.5 The Recipient County Department will maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

## **2.0 Standards of Conduct and Conflict of Interest Policies**

This section defines responsibility to identify and prevent a real or apparent conflict of interest.

### **2.1 Conflict of Interest**

In order to promote governmental integrity and to guard against even the appearance of impropriety, all County employees engaged in any vendor-related activity shall comply with the following standards of ethical conduct:

2.1.1 County employees shall discharge their duties impartially so as to assure fair access to governmental procurement by responsible vendors and service providers and to foster public confidence in the integrity of the County procurement system.

2.1.2 County employees shall not solicit, demand, accept or agree to accept a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement, specification, standard or contract.

2.1.3 The following groups shall not participate in or attempt to use their official position to influence any purchasing decisions in which they or persons related to them have a financial interest:

2.1.3.1 The employee, officer, or agent

2.1.3.2 Any member of his/her immediate family

2.1.3.3 His or her partner, or

2.1.3.4 An organization that employs, or is about to employ, any of the above.

2.1.4 In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the County. If anyone fails to report such benefit, he or she may be subject to disciplinary proceedings deemed appropriate by the County, as may be permitted by law.

### **2.2 Gratuities, Kickbacks, and Contingent Fees**

No member of the groups listed in item (2.1.3) above shall solicit, demand or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities, favors, etc. Anyone failing to adhere to the above may be subject to disciplinary proceedings deemed appropriate by the County, as may be permitted by law.

### 2.3 Confidential Information

No member of the groups listed in item (2.1.3) above shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above may be subject to any disciplinary proceeding deemed appropriate by the County, including possible dismissal, as may be permitted by law.

### 2.4 Organizational Conflict of Interest

Each entity that enters into a contract with the County is required, prior to entering into such contract, to inform the County of any real or apparent organizational conflict of interest. Such organizational conflicts of interest exists when the nature of the work to be performed under a contract may, without some restriction on future activities, result in an unfair competitive advantage to the contractor, or may impact the contractor's objectivity in performing the contract work.

## **3.0 Approval of Purchase Orders**

3.1 Purchase Order numbers may only be assigned by the Purchasing Department and only following receipt of a completed purchase requisition. The Purchasing Department will review the Purchase Order and all documentation to ensure its completeness and accuracy.

3.2 Following the above review, the Purchasing Department will assign the next consecutive Purchase Order number.

## **4.0 Written Record of Procurement History**

4.1 The Purchasing Department shall maintain records detailing the history of each FTA associated procurement.

4.2 These records are placed in a procurement master file and include:

4.2.1 The rationale for the method of procurement.

4.2.2 Selection of contract type.

4.2.3 Reasons for contractor selection or rejection; including requirement that contract awards are made only to responsible contractors capable of successfully performing under the terms and conditions of the proposed contract. Items to be considered include contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

4.2.4 The basis for the contract price.

- 4.3 Procurement Documentation Files, where appropriate, the procurement file will contain:
- 4.3.1 Purchase request, acquisition planning information, and other pre-solicitation documents
  - 4.3.2 Required internal approvals for award
  - 4.3.3 Rationale for the method of procurement (negotiations, formal advertising)
  - 4.3.4 List of sources solicited
  - 4.3.5 Independent cost estimate
  - 4.3.6 Description of work/scope of services
  - 4.3.7 Copies of published notices of proposed contract action
  - 4.3.8 Copy of the solicitation, all addenda, and all amendments
  - 4.3.9 Liquidated damages determination
  - 4.3.10 An abstract of each offer or quote
  - 4.3.11 Contractor's contingent fee representation and other certifications and representations if applicable
  - 4.3.12 Source selection documentation if applicable
  - 4.3.13 Contracting Officer's determination of contractor responsiveness and responsibility
  - 4.3.14 Cost or pricing data
  - 4.3.15 Determination that price is fair and reasonable including an analysis of the cost and price data
  - 4.3.16 Purchase Requisition indicating availability of funding
  - 4.3.17 Notice of award
  - 4.3.18 Notice to unsuccessful bidders or offerors and record of any debriefing,
  - 4.3.19 Record of any protest

- 4.3.20 Bid, Performance, Payment, or other bond documents, and notices to sureties
- 4.3.21 Required insurance documents, and
- 4.3.22 Notice to proceed
- 4.4 Contract Administration File, where appropriate, the contract administration file will contain:
  - 4.4.1 Executed contract and notice of award
  - 4.4.2 Bond-related documents
  - 4.4.3 Insurance documentation
  - 4.4.4 Post-award correspondence
  - 4.4.5 Notice to proceed
  - 4.4.6 Approvals or disapprovals of waivers and deviations

## **5.0 Written Procurement Selection Procedures**

- 5.1 The Purchasing Department shall use written selection procedures for procurement transactions as follows:

Solicitations shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- 5.2 When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
- 5.3 Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- 5.4 Bids/Proposals are evaluated by the Purchasing Department to identify the lowest, responsive, and responsible bidder or most advantageous proposer who provides

the best value. Contract awards will then be made by the Purchasing Department or Commissioners Court pursuant to their legal authority.

- 5.5 Solicitations will prohibit imposing unreasonable business requirements or unnecessary experience requirements for bidders or offerers.
- 5.6 Solicitations will not require excessive bonding requirements on third party contracts. Unnecessary performance bonding requirements reduce a prospective bidder's or offeror's capability to bid or offer a proposal on bonded work. Bonding is required on construction contracts.
- 5.7 Prohibits taking any arbitrary action in the procurement process.
- 5.8 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 an award.
- 5.9 Solicitations may not contain features that unduly restrict competition by using exclusionary or discriminatory specifications.
- 5.10 Solicitations and the awarded contract must include a clear and accurate description of the technical requirements for the property or services to be acquired in a manner that provides for full and open competition.
- 5.11 Because bids and offers can at times be ambiguous, in its solicitation documents, the County reserves the right to request additional information before making an award. The County also reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that the County finds ambiguous.

## **6.0 Prequalification of Bidders**

The Purchasing Department shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the Purchasing Department shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.

## **7.0 Debarment and Suspension**

Nonprocurement Suspension and Debarment apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount. The County must apply debarment and suspension requirements to itself and each third party.

- 7.1 Excluded Parties List System is now a part of the System for Awards Management (SAM), is an electronic, web-based system that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.
- 7.2 Documentation from the site, [www.sam.gov](http://www.sam.gov) verifying contractor is not on the Excluded Parties List System is required in the contract file.

## **8.0 Geographic Preferences**

The Purchasing Department shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

## **9.0 Competitive Awards**

- 9.1 **Procurement by Micropurchases.** Micro-purchases are purchases of goods and services for amounts less than \$3000.00. Procurements cannot be divided or reduced to meet or come within a Micro-purchase limit. A micro-purchase price must be fair and reasonable with documented description of how this determination was made and distributed equitably among qualified suppliers. If permitted by state or local law, micro-purchases for property or services valued at \$3000 or less can be used without obtaining competitive quotes. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, apply to construction contracts exceeding \$2000, even though the micro-purchase procedures are utilized.
- 9.2 **Procurement by Small Purchase Procedures.** Small purchases are purchases of goods and services for amounts greater than \$3,000 and less than \$100,000. The small purchase is exempt from Buy America requirements. A price or quote must be obtained from an adequate number of qualified sources. Small-purchases may not be divided or reduced to avoid the additional procurement requirements applicable to larger acquisitions.
- 9.3 **Procurement by Sealed Bids/Invitations for Bid.** Purchases by sealed bids/invitations for bid shall be made in accordance with the following requirements:
  - 9.3.1 A complete, adequate, precise, and realistic specification or purchase description is available.
  - 9.3.2 Two or more responsible bidders are willing and able to compete

effectively for the business.

9.3.3 The procurement generally lends itself to a firm fixed price contract.

9.3.4 The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.

9.3.5 Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

9.3.6 The invitation for bids is publicly advertised.

9.3.7 Bids are solicited from an adequate number of known suppliers.

9.3.8 The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.

9.3.9 Bidders are allowed sufficient time to prepare bids before the date of bid opening.

9.3.10 All bids are publicly opened at the time and place prescribed in the invitation for bids

9.3.11 A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.

9.3.12 Any or all bids may be rejected if there is a sound, documented business reason.

9.4 **Procurement by Competitive Proposal/Requests for Proposal.** Procurements by competitive proposal/requests for proposal shall be made in accordance with the following requirements:

9.4.1 The request for proposals is publicly advertised.

9.4.2 All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.

9.4.3 Proposals are solicited from an adequate number of qualified sources.

9.4.4 A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

9.4.5 An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.

9.5 **Procurement of Architectural and Engineering Services.** Procurements of architectural and engineering services shall be made in accordance with the following requirements.

9.5.1 Requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, determine whether qualifications-based procurement procedures may be used as described below.

9.5.1.1 Qualifications-based procurement procedures must be used for A&E services, and other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

9.5.2 An offeror's qualifications are evaluated to determine contract award.

9.5.3 Price is excluded as an evaluation factor.

9.5.4 Negotiations are first conducted with only the most qualified offeror.

9.5.5 Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

9.5.6 To the extent that a State has, before August 10, 2005, adopted by law, an equivalent State qualifications-based-procurement requirement for acquiring architectural, engineering, and design services, State procedures, rather than Federal "Brooks Act" procedures (40 U.S.C. Sections 1101 through 1104), may be used.

9.6 **Procurement of Design-Bid-Build.** Procurements of design-bid-build services shall be made in accordance with the following requirements:

9.6.1 The design-bid-build procurement method requires separate contracts for design services and for construction.

9.6.1.1 For design services, use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law and regulations.

9.6.1.2 Use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

9.7 **Procurement of Design Build.** Procurements of design build services shall be made in accordance with the following requirements:

9.7.1 The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.

9.8 **Procurement of Construction Services.** Procurements of constructions services shall be made in accordance with the following procedures:

9.8.1 Bonds are required for contracts in excess of \$100,000.

9.8.1.1 A bid guarantee equivalent to 5 percent of the bid price is required. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

9.8.1.2 A "performance bond" for 100 percent of the contract price is obtained to ensure completion of the obligations under the third party contract.

9.8.1.3 A standard payment bond for 100 percent of the contract price will ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law.

9.8.2 A local bonding policy that meets the following minimums is acceptable:

9.8.2.1 **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million,

9.8.2.2 **More Than \$1 Million but Less Than \$5 Million.** Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or

9.8.2.3 **More Than \$5 Million.** Two and one half million dollars if the contract price is more than \$5 million.

9.9 **Procurement of Steel, Iron or Manufactured products over \$100,000.** All iron, steel and manufactured products must be produced in the United States. For steel or manufactured products being procured, the appropriate certificate is required to be dated, completed, signed and submitted by each bidder.

9.9.1 Certificate of Compliance with Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended and the applicable regulations in 49 CFR part 661, or

9.9.2 Certificate of Non-Compliance with Section (a) of the Surface Transportation Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to section 165 (b) (2) or (b) (4) of the 1982 and regulations in 49 CFR 661.7

9.10 **Procurement of Buses, other Rolling Stock and associated equipment.** Unless a waiver has been granted by FTA or the product is subject to a general waiver, rolling stock must be assembled in the United States and have a 60 percent domestic content. The appropriate certificate as set forth below shall be dated, completed, signed and submitted by each bidder in accordance with the requirement contained in 661.13 (b).

9.10.1 The bidder certifies that it will comply with the requirements of section 165 (b) (3), of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11, or

9.10.2 The bidder certifies that it cannot comply with the requirements of section 165 (b) (3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirement consistent with section 165 (b) (2) or (b) (4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

9.10.3 Pre-Award and Post Delivery Audits of Rolling Stock purchases applies to purchases of rolling stock to carry passengers in revenue service. Pre-Award and Post-Delivery audits as described in Subpart A, B, C, and D of 449 CFR 663 is required.

9.10.3.1 Pre-Awards and Post-Delivery audits will be conducted and maintained on file.

9.10.3.2 Pre-Awards Audits are completed before entering into a formal contract for the purchase of rolling stock.

9.10.3.2.1 Pre-Award Audits include a Buy America certification as described in 663.25.

9.10.3.2.2 A purchaser's requirements certification as described in 663.27.

9.10.3.2.3 Where, appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in 663.41 or 663.43.

9.10.3.3 Post-Delivery Audits are completed before title to the rolling stock is transferred to purchaser.

9.10.3.3.1 Post Delivery Audits include a Buy America certification as described in 663.35.

9.10.3.3.2 A Post-Delivery purchaser's requirements certification as described in 663.37.

9.10.3.3.3 Where, appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in 663.41 or 663.43.

9.10.3.4 Certification of Compliance or Inapplicability of Federal Motor Vehicle Safety Standards.

9.10.3.4.1 A certification shall be kept on file that it was received both at pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards, or

9.10.3.4.2 A certification shall be kept on file that a copy of the manufacturer's statement that the that the vehicle purchased is not subject to Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration.

9.11 **Revenue Contracts.** A revenue contract is a contract whereby access is provided 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. Broad latitude in determining the extent and type of competition appropriate for a particular revenue contract is allowed. To ensure fair and equal access to FTA

assisted property and to maximize revenue derived from such property, revenue contracting shall be conducted as follows:

9.11.1 Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then a competitive process to permit interested parties an equal chance to obtain that limited opportunity will be provided.

9.11.2 Open Contract Opportunities. If, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and The County 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.

## **10.0 Non-Competitive Awards (Sole Source Procurements)**

10.1 A sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. This documentation is normally furnished by the originating department and verified by the Purchasing Department, which is responsible for making the final determination on sole source procurements.

10.2 The following areas must be considered in sole source determinations:

10.2.1 Contract amendment or change order that is beyond the scope of the original contract is considered a sole source procurement and must be justified.

10.2.2 Sole source procurement 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:

10.2.2.1 The item is available only from a single source;

10.2.2.2 The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to the County, or a situation requiring immediate action by the County) which will not permit a delay resulting from a competitive solicitation.

10.2.2.3FTA authorizes noncompetitive negotiations;

10.2.2.4 After solicitation of a number of sources, competition is determined inadequate; or

10.2.2.5 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 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 not higher than the price for such item by like customers.

10.2.3 A cost analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profit, is required.

10.2.4 The Purchasing Department shall conduct negotiations, as appropriate, as to price, delivery, and terms.

## **11.0 Protest Procedures and Disputes**

11.1 Filing of Protests: All Protests must be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1F Third Party Contracting Guidelines and the Fort Bend Procurement Policies and Procedures Manual. Upon request, the Contract Administrator (for the subject Bid/Proposal) will provide a copy of the aforementioned documents.

11.2 Protest Definitions: These definitions shall only apply to Protest Article in either the Instructions to Bidders or Proposers:

11.2.1 Appeal - Protestor's written summary describing the basis for appeal, provided to the County when requesting reconsideration of the County's Protest denial.

11.2.2 Interested Party - Actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract,

11.2.3 Prospective Offerer - Any bidder/proposer that has the actual capability and capacity to submit a bid/proposal meeting all the requirements set forth herein.

11.2.4 Protest - A succinct written description of the Protestor's objections to the content of the solicitation or the award of a contract.

11.2.5 Protestor - An Interested Party that has properly filed a timely protest.

11.2.6 Timely Filed Protest - A written document filed by a Protestor that meets the requirements outlined in PROTEST REQUIREMENTS below, and either the instruction to Bidders or Proposers.

### 11.3 Procedures:

11.3.1 In order for a Protest to be considered properly, the Protestor shall adhere to County's protest procedure by providing a written submission which shall contain at a minimum:

11.3.1.1 Name and address of the Protestor;

11.3.1.2 Its relationship to the procurement sufficient to establish that the protest is being filed by an Interested Party;

11.3.1.3 Written proof that protest has been filed in a timely manner;

11.3.1.4 The specific Contract No. identified in the Letter of Invitation;

11.3.1.5 The specific staff recommendation, County action, or inaction that is being protested.

11.3.1.6 The provision(s) of the solicitation, regulations, and/or laws upon which the protest is based, (i.e. identification of the technical specifications or item of content in the solicitation);

11.3.1.7 All documentation supporting the allegations in the protest; and,

11.3.1.8 A statement of the specific relief requested.

11.3.2 If the protest does not comply with any of the preceding requirements, it may not be considered for evaluation and may be returned to the Protestor who submitted the written documentation without appropriate substantiating information.

11.3.3 At the Protestor's discretion, a protest may be filed by electronic facsimile (with original copy by express mail) or by any other return receipt means. The County is not responsible for lost or otherwise delayed deliveries. A protest not filed within the time limits herein may be rejected without consideration or evaluation.

11.3.4 To be considered timely, protests concerning the content of a Bid/Proposal, including all attached documents must be filed with the Purchasing Department within ten (10) calendar days after the Purchasing Department first advertises the Bid/Proposal and received not later than 5:00 p.m. (local time) on the tenth day. If the tenth calendar day falls on a weekend or legal holiday, the protest period ends at 5:00 p.m. (local time) the following business day.

11.3.5 The Purchasing Department shall issue a written decision on the protest for content prior to opening or submission of proposals.

11.3.6 Protests concerning a recommendation for award, on any ground not based upon the content of the Bid/Proposal, must be filed with the Purchasing Department by an Interested Party within fifteen (15) calendar days after the Purchasing Department mails the recommendation for award notice and received not later than 5:00 p.m. (local time). If the fifteenth calendar day falls on a weekend or legal holiday, the Protest period ends at 5:00 p.m. (local time) the following business day.

11.3.7 The Purchasing Department will acknowledge only one protest on Bid/Proposal content. Any additional protests must be filed within the designated time after proposal submittal.

11.3.8 An appeal to the Commissioners Court concerning a denial to a protest, relating to a recommendation for award solicited by this Bid/Proposal must be filed by an Interested Party within five (5) calendar days after receipt of the denial of the protest.

11.3.9 The date of filing must be the date of receipt by the Purchasing Department.

11.3.10 All Protests must be filed in writing to: Fort Bend County Purchasing Agent, 4520 Reading Road, Suite A, Rosenberg, Texas 77471. No other location, or addressee shall be acceptable.

11.3.11 Note: Appeals addressed to the attention of the Fort Bend County Commissioners Court must be delivered to the above address for date and time stamping.

11.3.12 The Purchasing Department will respond to each substantive issue raised in all timely filed protests concerning content or contract award. The Purchasing Department shall make a written determination of the protest, within forty-five (45) working days from receipt of Protest. Any decision rendered by the Purchasing Department may be appealed to the Fort Bend County Commissioners Court.

11.3.13 The Protestor may withdraw its protest or appeal at any time before the Purchasing Department or Fort Bend County Commissioners Court issues a final decision.

11.4 Disputes-The County has the responsibility for evaluating and resolving third party contract disputes. If The County intends to request FTA's permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or intends to request increased Federal assistance for that purpose, the following actions are required:

11.4.1 Notify FTA-Provide a list of disputes involving third party contracts and potential third party contracts that have a value exceeding \$100,000, involve a controversial matter, irrespective of amount, or involve a highly publicized matter, irrespective of amount.

11.4.2 Details- Provide a brief description of the dispute, the basis of disagreement, and if open, how far the dispute has proceeded, or if resolved, the agreement or decision reached, and whether an appeal has been taken or is likely to be taken.

11.4.3 When and How to Report- Information should be provided in the next quarterly Milestone Progress Report, and at its next Project Management Oversight review, if any.

11.4.4 FTA Officials to Notify-Inform the FTA project manager about disputes and about any unusual activity.

## **12. Federal Contract Clauses**

FTA funded contracts and/or purchase orders must include all applicable federal contract clauses.

## **13.0 Price/Cost Analysis**

- 13.1 In all FTA-funded procurements, a price or cost analysis shall be used to determine the reasonableness of the bid price.
- 13.2 The Purchasing Department may conduct a price analysis in evaluating a bid price.
- 13.3 If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.
- 13.4 “Price analysis” is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.
- 13.5 “Cost analysis” is the review and analysis of a contractor's cost or pricing data and of the factors applied in projection from the data to the estimated costs in order to form an opinion on the degree to which the contractor's proposed costs represent the cost of performance of the contract, assuming reasonable economy and efficiency.
- 13.6 As compared to price analysis, cost analysis involves a more detailed review of the offeror's proposal.

13.7 Normally, price analysis may be accomplished through one or more of the following activities:

13.7.1 The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, etc.).

13.7.2 The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point out apparent gross inconsistencies that should be subjected to greater pricing inquiry.

13.7.3 The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicators, to the County with discount or rebate arrangements.

13.7.4 The comparison of proposed prices with estimates of cost independently developed by personnel within the County.

13.7.5 The comparison of prices paid by other users (government or commercial) of the same or similar items to the proposed prices.

13.7.6 Normally, cost analysis may be accomplished through the following:

13.7.6.1 Verify contractor's cost data.

13.7.6.2 Evaluate specific elements of costs and project these elements to determine the effect on prices of such factors as:

- The necessity for certain costs;
- The reasonableness of amounts estimated for the necessary costs;
- Allowances for contingencies; and
- The basis used for allocations of particular overhead costs to the proposed contract.

13.7.6.3 When the necessary data is available, compare the contractor's estimated cost with:

- Actual costs previously incurred by the contractor;
- The contractor's last prior cost estimate for the same or similar estimates;
- Current cost estimates from other possible sources; and

- Prior estimates or historical costs of other contractors manufacturing the same or similar items.

#### 13.7.6.4 Forecasting future trends in costs from historical experience:

- In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
- In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

13.7.7 In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

13.7.7.1 Is the cost allowable in accordance with Federal guidelines?

13.7.7.2 Is the cost allocable to the particular project?; and,

13.7.7.3 Is the cost reasonable?

13.7.8 If only one bid is received, the sole bidder must cooperate with the County as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of the single bid.

## **14.0 Amendments and Change Orders**

14.1 An amendment is any change to a contract, task order, or work order for any professional services including all architectural and engineering services that alters the terms and conditions of the original document. Any change in the scope of a contract that increases the cost of the contract must follow the Sole Source Procurement procedures. Amendments are formal changes that must be approved at the same signature authority level as the original document.

14.2 The County shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, the County shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after

the issuance of the change order.

- 14.3 All amendments and change orders shall be submitted to the Purchasing Department by the Project Manager complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
- 14.4 The Purchasing Department will verify all amendments and change orders as to the:
  - 14.4.1 Appropriateness of the modification of the contract and whether it is unreasonable to do a separate bid for the item under consideration.
  - 14.4.2 The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.
- 14.5 The issuance of change orders for each individual contract shall be handled by the Purchasing Department.

## **15.0 Prohibited or Restricted Contract Types**

The following contract types are restricted or prohibited:

- 15.1 Cost Plus a Percentage of Cost-Prohibited:

The use of the cost plus a percentage of cost method of contracting is expressly prohibited.
- 15.2 Percentage of Construction Cost-Prohibited.

The use of the percentage of construction cost method of contracting is expressly prohibited.
- 15.3 Time and Materials-Restricted.

The County shall use time and material type contracts only:
  - 15.3.1 After a determination that no other type of contract is suitable; and
  - 15.3.2 If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

## **16.0 Piggybacking**

"Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services. Piggybacking is permissible when the solicitation document and resultant contract

contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

## **17.0 Tag-ons**

“Tag-on” is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. “In scope” changes are not tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others.

## **18.0 Options**

The County may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, the County may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If the County chooses to use options, the requirements below apply:

### **18.1 Evaluation of Options**

The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

### **18.2 Exercise of Options**

18.2.1 The County must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

18.2.2 An option may not be exercised unless the County has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

## **19.0 Contract Term Limitation**

The County shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the

contract term length that amounts to an out of scope change will require a sole source justification.

- 19.1 Termination- Termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000.

## **20.0 Advance Payments**

The County does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

## **21.0 Progress Payments**

The County may use progress payments provided the following requirements are followed:

- 21.1 Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- 21.2 The County must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit, bonding or equivalent means to protect the FTA's and the County's interests in the progress payment.

## **22.0 Liquidated Damages**

The County may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. In order to obtain liquidated damages, the County must suffer an actual loss. The amount of liquidated damages must be reasonable in light of the loss suffered. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the solicitation and contract documents. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

## **23.0 Disadvantaged Business Enterprise**

The County has determined that disadvantaged business enterprises as defined in 49 C.F.R. Part 26 shall have the opportunity to compete fairly for contracts financed in whole or in part with FTA funds. Accordingly, all County procurements funded with FTA funds may include, as appropriate, the use of goals for the procurement of all classes of goods and services.

## **24.0 Oversight of Subrecipients**

The County is responsible for assuring that each of its subrecipients complies with the applicable requirements and standards of FTA funded procurements, and that each of its subrecipients is aware of the Federal statutory and regulatory requirements that apply to its

actions as a subrecipient.

## **25.0 Signature Authority**

The following positions have signature authority to authorize requisitions and approve payments of all invoices for the Department of Public Transportation:

Director of Transportation Department  
Deputy Director  
Financial and Administration Manager  
Grants Budget Manager