

HARRIS COUNTY PURCHASING AGENT



GUIDELINES FOR FEDERAL TRANSPORTATION ADMINISTRATION FUNDED PROCUREMENTS

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**GUIDELINES FOR
FEDERAL TRANSPORTATION ADMINISTRATION FUNDED PROCUREMENTS**

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

1.0 Contract Administration System

Harris County Community & Economic Development Department (also known as Community Services Department), Office of Transit Services, (recipient) has adopted these Rules and 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 (consolidated) 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 shall be documented by completion of the "Method of Procurement Decision Matrix" form included hereto as, **ATTACHMENT A.**

4.2.2 Selection of contract type which shall be documented by completion of the "Method of Procurement Decision Matrix" form included hereto as, **ATTACHMENT A.**

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 Contract file

Where appropriate, the contract 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 shall be documented by completion of the “Independent Cost Estimate” form included hereto as, **ATTACHMENT B**.
- 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 A bid tabulation
- 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 shall be documented by completion of either the “Cost Analysis” form or the “Price Analysis” form included hereto as, **ATTACHMENT C** or **ATTACHMENT D**, respectively.
- 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/Notice to unsuccessful bidders or offerors
- 4.3.18 Record of any protest
- 4.3.19 Bid, Performance, Payment, or other bond documents, and notices to sureties
- 4.3.20 Required insurance documents
- 4.3.21 Notice to proceed
- 4.3.22 Executed contract

- 4.3.23 Bond-related documents
- 4.3.24 Insurance documentation
- 4.3.25 Post-award correspondence
- 4.3.26 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 offerors.
- 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 is prohibited.
- 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

Non-procurement 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 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 Micro-purchases. Micro-purchases are purchases of goods and services for amounts less than \$10,000. 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 \$10,000 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 \$2,000, 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 \$10,000 and less than \$50,000. 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 Buy America. Procurement of Steel, Iron or Manufactured products over \$150,000. 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 apply 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.

9.12 Interlocal Agreements. To foster greater economy and efficiency and in accordance with efforts to promote cost-effective use of shared services across the federal government, Harris County may opt to enter into state and local interlocal agreements or intergovernmental agreements, where appropriate, for procurement or use of common or shared goods and services, provided the following conditions are met:

- i. The agreement provides for greater economy and efficiency and results in cost savings. Before utilizing an interagency agreement for procurement, the County shall compare the cost and availability of the identified supplies or services on the open market with the cost of purchasing them through another unit of government to determine if it is the most economical and efficient method;
- ii. The agreement is used for common supplies and services that are of a routine nature only. In deciding whether it is appropriate for the County to obtain supplies or services through an intergovernmental agreement rather than through a competitive procurement, the nature of the required supplies or services will be a determining factor. Intergovernmental agreements may be used only for the procurement and use of common supplies and services. If services, required by the County, are provided by the State or a locality and are part of that government's normal duties and responsibilities, it is permissible for the County to share the services and cost of staff under an agreement;

- iii. The County shall take steps to ensure that any supplies or services obtained using another agency's contract were purchased in compliance with 2 C.F.R. 200;
- iv. The County's procurement files shall contain a copy of the Interlocal Agreement and documentation showing that cost and availability were evaluated before the agreement was executed, and these factors are reviewed and compared at least annually with those contained in the agreement; and
- v. The agreement shall be between the County and a state or local governmental agency.

When using interlocal or cooperative purchasing, the Purchasing Agent is required to effect as much competition as practical for the circumstances and shall ensure compliance pursuant to Texas Local Government Code Sections 271.081-083 and Sections 271.101 – 103, to the extent applicable. The County may not use an interlocal contract and add extra or unrelated goods or services that were not part of the original contract. The County shall review any standard agreements to make sure that all applicable procurement regulations are met and that the County's interests are protected. After entering into an agreement, the County shall compare cost and availability annually to determine if the terms of the agreement continue to pass the tests of economy and efficiency.

10.0 Non-Competitive Awards (Sole Source Procurement)

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:

1021 Contract amendment or change order that is beyond the scope of the original contract is considered sole source procurement and must be justified.

1022 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.

10.2.2.3 FTA 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.

1023 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.

10.2.3.1 Profit. Harris County must negotiate profit as a separated element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

1024 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 Harris County 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 number 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.
 - 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: Harris County Purchasing Agent, 1001 Preston, Suite 670, and Houston, Texas 77002. No other location or addressee shall be acceptable.
- 11.3.11 Note: Appeals addressed to the attention of the Harris 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 Harris County Commissioners Court.
- 11.3.13 The Protestor may withdraw its protest or appeal at any time before the Purchasing Department or Harris 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.

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.

- 11.4.2 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.
- 11.4.3 FTA Officials to Notify-Inform the FTA project manager about disputes and about any unusual activity.

12.0 Federal Contract Clauses

FTA funded contracts and/or purchase orders must include all applicable federal contract clauses. Not all clauses apply to every contract. The applicability of clauses depends on the size and type of procurement. Harris County shall make the final determination on the applicable clauses and ensure that specific contract documents and language is made a standard part of every solicitation and/or contract with contractors, subcontractors, sub recipients and other governmental agencies.

See **ATTACHMENT E** for a list of 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.

- 13.1.1 Independent Cost Estimate. An Independent Cost Estimate (ICE) is the estimated cost of a proposed expenditure. An Independent Cost Estimate assists in evaluating the cost reasonableness of a contractor's proposed costs or prices on an objective basis and is a required procedure when conducting procurements that exceed the Simplified Acquisition Threshold.

Before issuing a solicitation, Harris County must develop an Independent Cost Estimate for the products or services to be purchased. If Harris County intends to require a breakdown of estimated costs, the in-house Independent Cost Estimate should be broken down into the various cost elements.

- 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 Contracting with Small and Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms

23.1 It is the policy of Harris County that Minority and Women Business Enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Harris County and its sub recipients and contractors must take all necessary affirmative steps to assure that minority businesses, small businesses, women's business enterprises, historically underutilized businesses, and labor surplus area firms are used when possible. Affirmative steps must include:

- 23.1.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 23.1.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 23.1.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 23.1.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 23.1.5 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
- 23.1.6 Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

Language supporting equal opportunity shall be included in the solicitation specifications and contract documents, contractor eligibility shall be verified, required documentation shall be secured, and compliance shall be monitored.

24.0 Disadvantaged Business Enterprise (DBE)

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.

- 24.1 The utilization of MBE/WBE goals and DBE goals on the same procurement is a prohibited action for contracts financed in whole or in part with FTA funds. In procurements where a DBE goal has been established, the use of the DBE goal shall supersede the use of Harris County's MBE/WBE goal.

25.0 Oversight of Sub recipients

The County is responsible for assuring that each of its sub recipients complies with the applicable requirements and standards of FTA funded procurements, and that each of its sub recipients is aware of the Federal statutory and regulatory requirements that apply to its actions as a sub recipient.

26.0 Signature Authority

The following positions have signature authority to authorize requisitions and approve payments of all invoices for the Office of Transit Services:

Director, Harris County Community Services Department
Chief Program Officer, Harris County Community Services Department
Transit Services Director
Transit Services Assistant Director/Deputy Assistant Director
Chief Finance Officer/Director of Finance
Grant Accounting & Transit Accounting Assistant Director
Accounting Supervisor

ATTACHMENT A

Method of Procurement Decision Matrix

Determined suitable procurement method by checking appropriate boxes. All elements must apply to use that method. The planned type of contract can be added to this checklist.

Micro Purchase

- Amount \$1.00 - \$10,000
- Multiple Sources

Sealed Bid (IFB) Amount >\$50,000

(>\$50,000 if executed prior to Super Circular)

- Complete & Adequate Specification Description
- Two or More Responsible Bidders willing to Compete
- Selection can be made on Basis of Price Alone
- Firm Fixed Price Contract is used
- No Discussion with Bidders Required after Receipt of Bids

Small Purchase - Amount \$10,001 - \$49,999

(<\$50,000 if executed prior to Super Circular)

- Complete and Adequate Specification or Description
- Minimum of Two or More Quotes Available

Competitive Proposal (RFP) >\$50,000

(>\$50,000 if executed prior to Super Circular)

- Complete Specifications Not Feasible
- Proper Input needed
- Two or More Responsible Proposers willing to Compete
- Discussion needed with Proposers after proposals Received
- Fixed Price can be set after Discussions or a Cost Reimbursement contract is Determined

Sole Source

- Approved by FTA
- OEM Custom Item OR
- Only One Source OR
- Competition Inadequate after Solicitation OR
- Emergency / Public Emergency
- Renewals

Competitive Procurement

- Amount >\$10,000
- Multiple Sources
- Not an Emergency

Selection of Contract Type:

5 /3/2019

ATTACHMENT B

***** Use Vendors Not Participating In Quote*****

Independent Cost Estimate Form

Independent Cost Estimate Summary Form

Date of Estimate: _____

Description of Goods/ Services:

____ New Procurement ____ Contract Modification (change order)

____ Exercise of Option

Method of Obtaining Estimate:

Attach additional documentation such as previous pricing documentation.

____ Published Price List (attach source and date)

____ Historical Pricing (attach copy of documentation from previous P.O/ Contract)

____ Comparable Purchases by Other Agencies (attach email correspondence)

____ Engineering or Technical Estimate (attach)

____ Independent Third Party Estimate (attach)

____ Other (specify) _____ (attach documentation)

____ Pre-established pricing resulting from competition (contract modification only)

Through the method(s) stated above, it has determined the estimated total cost of the goods/services is \$_____.

The preceding independent cost estimate was prepared by:

Name

Signature

Date

5-3-2019

ATTACHMENT C

COST ANALYSIS <i>(For Sole Source, Professional Services, and Engineering Contracts)</i>				
<i>Vendor</i>	<i>Description</i>	<i>ICE</i>	<i>Proposal Elements</i>	<i>Variance</i>

Signature:

Date:

5/3/2019

ATTACHMENT D

PRICE ANALYSIS <i>(Price Analysis is used when Cost Aligns with I.C.E)</i>				
<i>Vendor</i>	<i>Description</i>	<i>ICE</i>	<i>Supplier Price</i>	<i>Unit</i>

Signature:

Date:

5/3/2019

ATTACHMENT E

List of Applicable Federal Contract Clauses

E.1 Bonding
(Applicable to All Construction Procurements)

See Section 9.8, Procurement of Construction Services

E.2 Remedies
(Applicable to All Procurements Over \$50,000)

Contracts awarded by Harris County for more than the Simplified Acquisition Threshold, which for Harris County is set at \$50,000, shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

E.3 Termination for Cause & Convenience
(Applicable to All Procurements Over \$10,000)

See Section 19.0, Termination

E.4 Equal Employment Opportunity
(Applicable to All Construction Procurements Over \$10,000)

Harris County shall, in accordance with Title VII of the Civil Rights Act of 1968, comply with all applicable equal employment opportunity requirements of U.S. Department of Labor regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor), which implement Executive Order No. 11246, *Equal Employment Opportunity*, as amended by Executive Order No. 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*.

Harris County shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, gender identity, disability, veteran status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

A contractor must refrain from discrimination against present and prospective employees for reason of age in accordance with section 4 of the Age Discrimination in Employment Act of 1967 (codified as amended at 29 U.S.C. 623). Additionally, a contractor must, in accordance with Section 102 of the Americans with Disabilities Act of 1990 (codified as amended at 42 U.S.C. 12112) and the requirements of the U.S. Equal Employment Opportunity Commission at 29 C.F.R. Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act) pertaining to employment of persons with disabilities.

Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. Part 60–1.3 shall include the equal opportunity clause provided under 41 C.F.R. 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Harris County shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

- (i) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by County setting forth the provisions of this nondiscrimination clause.
- (ii) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- (iii) 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 Contractor's legal duty to furnish information.
- (iv) 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 by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (v) 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.
- (vi) Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of Contractor's noncompliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, the contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No.11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No.11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) Contractor will include the provisions of paragraphs (i) through (viii) 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 No. 11246 of September 24,1965, so that such provisions will be binding upon each sub consultant or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a sub consultant or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Harris County agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. However, as a local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of Harris County which does not participate in work on or under the contract.

Harris County agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Harris County further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub-contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart

D of the Executive Order. In addition, Harris County agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to Harris County under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

These requirements shall extend to all third-party contractors and their contracts at every tier and sub recipients and their subcontracts at every tier.

E.5 Davis-Bacon and Related Acts
(For All Construction Procurements over \$2,000)

Harris County shall comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3148 and 40 U.S.C. 276a to a-7). When required by Federal program legislation, construction contracts in excess of \$2,000 awarded by Harris County shall require compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 C.F.R. part 3). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

Harris County shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. Harris County shall report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c and 40 U.S.C. 3145), as supplemented by Department of Labor regulations (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 Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Harris County shall report all suspected or reported violations to the Federal awarding agency.

These requirements shall extend to all third-party contractors and their contracts at every tier and sub recipients and their subcontracts at every tier that exceed \$2,000.

E.6 Contract Work Hours and Safety Standards Act
(Applicable to All Operations and Management Procurements Over \$100,000)

Harris County shall comply with the Contract Work Hours and Safety Standards Act, pursuant to 40 U.S. Code 3701–3708 and 40 U.S. Code 327-333. Where applicable, all contracts awarded by the Harris County in excess of \$100,000 that involve the employment of mechanics

or laborers must include a provision for compliance with 40 U.S. Code 3702 and 3704, as supplemented by Department of Labor regulations. Under 40 U.S. Code 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S. Code 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

These requirements shall extend to all third-party contractors and their contracts at every tier and sub recipients and their subcontracts at every tier that exceed \$100,000.

E.7 Rights to Inventions Made Under Contract or Agreement

Patents, copyrights, and rights in data requirements arise within the context of federally assisted projects, the purpose of which is to finance the development of a product or information. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. 401.2 (a) and Harris County 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,” Harris County shall 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.

E.8 Clean Air Act and Federal Water Pollution Control Act (Applicable All Procurements Over \$100,000)

Harris County shall comply with the Clean Air Act¹¹⁵ and the Federal Water Pollution Control Act. The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Where applicable, all contracts awarded by the Harris County in excess of \$150,000 shall contain a provision for compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. The Federal Water Pollution Control Act (“Clean Water Act”) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

Section 508 of the Clean Water Act and EPA’s implementing regulations at 2 C.F.R. Part 1523, subpart J, disqualify persons convicted of certain offenses from eligibility to receive any contract, subcontract, assistance, sub assistance, loan, or other non-procurement benefit or transaction that is prohibited by a Federal agency under the government debarment and suspension system if a person will perform any part of the transaction or award at the facility giving rise to the conviction and the person owns, leases, or supervises the facility. Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

The Clean Air Act and the Federal Water Pollution Control Act requirements shall extend to all third-party contractors and their contracts at every tier and sub recipients and their subcontracts at every tier that exceed \$150,000.

**E.9 Procurement of Recovered Materials (Section 6002 of the Solid Waste Disposal Act)
(Applicable to All Procurements Over \$10,000)**

Harris County shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, by procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; providing a preference to 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. Code 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

These requirements shall extend to all third-party contractors and their contracts at every tier and sub recipients and their subcontracts at every tier that exceed \$10,000.

**E.10 Notification to FTA; Flow down Requirement
(Applicable to All Procurements over \$10,000)**

If a current or prospective legal matter that may affect the Federal Government emerges, the Harris County must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its sub-agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- i. 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.
- ii. 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.
- iii. Additional Notice to U.S. DOT Inspector General. Harris County 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 Recipient is located, if the Recipient

has knowledge of potential fraud, waste, or abuse occurring on a 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 whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third-Party Participant of the Recipient. It 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 Recipient. In this paragraph, “promptly” means to refer information without delay and without change.

This notification provision applies to all applicable divisions of Harris County, its Contractors and subcontractors, including divisions tasked with law enforcement or investigatory functions.

E.11 Telecommunication and Video Surveillance Equipment or Services
(Applicable to All Procurements over \$10,000)

Recipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems 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. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) 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).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the 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.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

These requirements shall extend to all third-party contractors and their contracts at every tier and sub recipients and their subcontracts at every tier that exceed \$10,000.

Additional Clauses Required by 2 CFR 200 Appendix II:

E.12 Debarment and Suspension
(Applicable to All Procurements over \$25,000)

See Section 7.0, Debarment and Suspension

E.13 Byrd Anti-Lobbying
(Applicable to All Procurements over \$100,000)

Harris County shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification required by 49 CFR Part 20. 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. Code 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

These requirements shall extend to all third-party contractors and their contracts at every tier and sub recipients and their subcontracts at every tier.

E.14 All other required Federal contract provisions or clauses not expressly stated herein shall be incorporated in all procurements or contracts, as applicable.