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## Policies and Procedures for FTA Procurement



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## I. INTRODUCTION

The Federal Transit Administration (FTA) requires an FTA recipient to conduct all third-party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, specifically the requirements of FTA Circular 4220.1F and applicable statutory and administrative requirements.

The following procedures provide guidance for Third-party Procurements financed in whole or in part with grant funds awarded by the FTA and are designed to set forth the standards for processing all contracts funded by FTA Grants which are awarded to GoCary. These standards are included to ensure that goods, equipment, materials, supplies, real property and services are obtained in an efficient and economical fashion, adhering to the principles of good administrative practices. For a complete list of all requirements, refer to FTA Circular 4220.1F and its appendices.

## II. PROCUREMENT PROCEDURES

GoCary follows Town of Cary procurement policies and procedures.

### 1. **Authority.**

The procurement policies and procedures discussed in the Manual have been developed in conformance with the standards and limitations established by State and Federal laws as follows:

- North Carolina General Statutes, Article 8 of Chapter 143 of the General Statutes of North Carolina (Public Contracts)
- North Carolina Department of State Treasurer Policy Manual for Local Governments, Section 35: Purchasing and Contracting
- Town of Cary Code of Ordinances

The applicable Federal laws, regulations and agreements affecting the procurement practices are as follows:

- Federal Transit Act (FTA) (formerly Urban Mass Transportation Act of 1964), as amended, through June 1992, 49 USC Sec. 1601 et seq.
- Department of Transportation, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18
- FTA Master Agreement
- FTA Circular 5200.1A, Full-Funding Grant Agreements Guidance, December 5, 2002
- FTA Circular 4220.1F, Third-party Contracting Guideline, November 1, 2008
- FTA Circular 5010.1C, Grant Management Guidelines, October 1, 1998
- Participation by Disadvantaged Business in Department of Transportation Programs, 49 CFR Part 26

### 2. **Roles and Responsibilities.**

GoCary will follow all applicable Town of Cary purchasing guidelines, as well as, all applicable local, state and federal guidelines when procuring items using FTA funds. GoCary will use an Informal Bid Process for FTA purchases between the amounts of \$10,000 and \$89,999.99 and will use a Formal Bid Process for FTA purchases that exceed \$250,000, or according to NC General Statutes if lower thresholds apply.

### **3. Written standards of conduct.**

The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees that are engaged in or otherwise involved in the award or administration of third-party contracts.

### **4. Town of Cary Code of Ethics/Conflict of interest policy.**

From Town of Cary Policy Statement 112 Finance Policy:

No officer or employee of the Town who is charged with:

- 1) preparing plans, specifications, or estimates for public contracts
- 2) awarding or administering contracts
- 3) inspecting or supervising construction

will receive a gift or favor from any contractor, subcontractor, or supplier who

- 1) has a contract with the Town
- 2) has performed under such a contract within the past year
- 3) anticipates bidding on such a contract in the future.

Furthermore, the Town will not directly, nor indirectly, enter into a contract for the provision of goods and/or services with any employee(s) of the Town or any businesses in which a Town employee has greater than a ten percent ownership. If any such contract is entered into, it shall be canceled upon discovery and the delivery of goods and/or services there under shall no longer be accepted. Any Town employee(s) who knowingly enter into such a contract with the Town shall be subject to disciplinary action as provided for by Town ordinances and/or policies.

From the Town of Cary Personnel Ordinance:

Sec. 2-71. Contracts; conflict of interest. No officer or employee of the town, appointed or elected, shall undertake any venture, or make any contract, for his own benefit, under his official authority, or be in any manner concerned or interested in making such contracts, or in the profits thereof, either privately or openly, singly or jointly with another unless authorized by the town council and not in conflict with G.S. 14-234.

Sec. 2-91. Conditions of employment. No official or employee of the town shall:

- 1) Accept any gift, favor or thing of value that may tend to improperly influence or be perceived to improperly influence such employee in the discharge of the employee's duties; or
- 2) Grant in the discharge of duty an improper favor, service, or thing of value.

### **5. Self-certification.**

FTA expects each recipient to self-certify that its procurement system complies with Federal requirements for any FTA assisted third-party contract the recipient undertakes and administers.

### **6. Third-party contracting capacity.**

As part of a FTA recipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the recipient's third-party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements. Many FTA recipients assign contracting duties to technical, financial or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating

contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

- a. **Written Procurement Procedures.** The Common Grant Rule for non-governmental recipients requires the recipient to have written procurement procedures, and by implication, the Common Grant Rule for governmental recipients requires written procurement procedures as a condition of self-certification. The recipient's procurement procedures are expected to address:
  - i. Solicitations. The following standards apply to solicitations:
  - ii. Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured is required (discussed further in Chapter VI of FTA Circular 4220.1F).
  - iii. Nonrestrictive Specifications. In competitive procurements, the description may not contain features that unduly restrict competition. Notably, FTA may not finance procurements that use exclusionary or discriminatory specifications (discussed further in Chapter VI of FTA Circular 4220.1F).
  - iv. Quality Requirements. A description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy the recipient's intended use (discussed further in Chapter VI of FTA Circular 4220.1F).
  - v. Preference for Performance Specifications. The Common Grant Rule for governmental recipients advises the recipient that "detailed product specifications should be avoided if at all possible." The Common Grant Rule for non-governmental recipients advises the recipient to describe technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards" (discussed further in Chapter VI of FTA Circular 4220.1F).
  - vi. Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" proposal must be clearly stated (discussed further in Chapter VI of FTA Circular 4220.1F).

## **7. Contract Administration System.**

The Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local responsibilities.

GoCary's Contract Administration system ensures that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State, and local responsibilities. For sealed bid procurements and competitive negotiations, the procurement and/or contract file shall contain the following documentation:

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

#### **8. Protests.**

The Common Grant Rules charges the recipient with the initial responsibility to resolve protests of third-party contract awards. All protests must be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1F Third-party Contracting Guidelines, as well as, applicable GoCary and Town of Cary Procurement Policies. The recipient shall notify FTA when it receives a third-party contract protest and keep FTA informed about the status of the protest.

GoCary protest procedures are as follows:

- a. General Rules for Protests - Bidders submitting applications shall be provided an e-mail address for communication with the Purchasing Manager during the protest process. The bidder shall provide at least two e-mail addresses for use by the Purchasing Manager in communicating with the bidder.
- b. A written bid protest must be received by the Purchasing Manager, or designee, within two business days of bid opening. The written protest shall clearly identify the project and the Project Manager, clearly articulate the reasons for the protest, and attach any documents or additional information in support of the bidder's position. The Purchasing Manager, or designee, will contact the bidder and set up a date and time to discuss the protest. Upon review, the Purchasing Manager, or designee, shall notify the bidder of the decision on the bid protest in writing by e-mail and first-class mail.



- c. If the bidder desires further review after receiving the decision of the Purchasing Manager, the bidder may request an administrative review and final decision by the Town Manager, or designee. A written request for administrative review must be received by the Town Manager, or designee, within two business days of the bidder's receipt of the decision from the Purchasing Manager, or designee. The request for administrative review shall clearly identify the project and the Project Manager, clearly articulate the reasons for the review, and attach any documents or additional information in support of the bidder's position. The Town Manager, or designee, will contact the bidder and set up a date and time for the administrative review. The Town Manager, or designee, shall notify the bidder of the decision on the protest in writing by e-mail and first-class mail.

## 9. **Prequalification.**

Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether it satisfies the recipient's standards. Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step procurements and qualifications-based procurements. The Common Grant Rule for governmental recipients permits a recipient to prequalify people, firms, and property for procurement purposes under the following standards:

- a. **Lists.** The recipient ensures that all prequalification lists it uses are current.
- b. **Sources.** The recipient ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.
- c. **Qualification Periods.** The recipient permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). FTA, however, does not require a recipient to hold a solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor must a recipient expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period.

## 10. **Federal Cost Principles.**

The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient. The following cost principles apply to GoCary procurements funded with FTA grants:

- a. **Governmental Entities.** OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 CFR Part 225, applies to project costs incurred by a recipient that is a State, local, or Indian tribal government.

# III. PROHIBITIONS

## 1. **Prohibitions.**

The Common Grant Rules prohibits solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, the following, all of which are identified in one or both Common Grant Rules:

- a. **Excessive Qualifications.** Imposing unreasonable business requirements for bidders or offerors.
- b. **Unnecessary Experience.** Imposing unnecessary experience requirements for bidders and offerors.
- c. **Improper Prequalification.** Using prequalification procedures that conflict with the prequalification standards described in FTA Circular 4220.1F.
- d. **Retainer Contracts.** Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
- e. **Excessive Bonding.** To encourage greater contractor participation in FTA assisted projects, FTA does not require the recipient to impose bonding requirements on its third-party contractors other than construction bonding specified by the Common Grant Rules and FTA Circular 4220.1F for construction. FTA discourages unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by disadvantaged business enterprises.

FTA does not require the grant recipient to impose bonding requirements on its third-party contractors other than construction bonding. GoCary bonding requirements shall be reasonable, shall not be unduly restrictive, and shall not violate the Common Grant Rules as restrictive of competition. Unnecessary bonding is discouraged because it increases the cost of the contract and restricts competition. Unnecessary performance bonding requirements reduce a prospective bidder's or offeror's capability to bid or offer a proposal on bonded work.

- f. **Brand Name Only.** Specifying only a "brand name" product without allowing offers of "an equal" product or allowing "an equal" product without listing the salient characteristics that the "equal" product must meet to be acceptable for award.
- g. **In-State or Local Geographic Restrictions.** Specifying in-State or local geographical preferences or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers.
  - i. Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

## 2. Organizational Conflicts of Interest.

Engaging in practices that result in organizational conflicts of interest is prohibited by the Common Grant Rules:

- a. **Occurrence.** An organizational conflict of interest occurs when any of the following circumstances arise:
  - i. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
  - ii. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.



iii. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

b. **Remedies**. FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

### 3. Restraint of Trade.

Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

### 4. Arbitrary Action.

Taking any arbitrary action in the procurement process.

### 5. Cost Plus a Percentage of Cost—Prohibited.

The Common Grant Rules expressly prohibits the use of the cost plus a percentage of cost method of contracting.

### 6. Percentage of Construction Cost – Prohibited.

The Common Grant Rules expressly prohibits the use of the percentage of construction cost method of contracting.

### 7. Time and Materials – Restricted.

The Common Grant Rule for governmental recipients permits the use of time and materials contracts only:

- a) When to Use. After determining that no other contract type is suitable; and
- b) Firm Ceiling Price: If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

## IV. PROCUREMENT ELEMENTS

### 1. Determining the Recipient's Needs

To support a third-party contract with Federal assistance awarded by the Federal Transit Administration (FTA), the Common Grant Rules require the recipient to adopt adequate procedures for determining the type and amount of property and services it needs to acquire:

- a. Eligibility. The property and services to be acquired must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. For example, FTA prohibits the use of capital assistance for the recipient's operations expenses. If FTA assistance will be used to finance the cost of property or services, the property or services must be within the scope of the specific project from which that FTA assistance will be derived.
- b. Necessity. The Common Grant Rules requires the recipient to establish procedures 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). In monitoring whether a recipient

has complied with its procedures to determine what property or services are unnecessary, FTA bases its determinations on what would have been a recipient's reasonable expectations at the time the recipient entered into the contract.

- c. Procurement Size. The recipient should consider whether to consolidate or break out the procurement to obtain a more economical purchase. This could include Joint Procurements, and/or Small Procurements.
- d. Options. The recipient's contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. Chapter VI of FTA circular 42201.F contains procedures for evaluating options.
- c. Lease versus Purchase. To obtain the best value, the recipient should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The recipient may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the recipient may lease an asset, FTA regulations, "Capital Leases," 49 CFR Part 639, Subpart C, require the recipient to make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.

## **2. Independent Cost Estimate (ICE).**

GoCary will prepare an independent cost estimate (ICE) for all procurements before receiving bids or proposals. An ICE is also required for each subsequent change order. The ICE will be used to assess the reasonableness of cost for goods or services. The estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as:

- a. Polls of known vendors who can provide parts, material or equipment.
- b. Recent competitive bids from other agencies that recently obtained the same goods and/or services.
- c. Scanning the internet.
- d. Using historical data from previous competitive procurements updated with inflation factors.

For contract modifications, the independent estimate must be prepared without knowledge of the contractor's proposed pricing. The ICE may be completed in-house or by an external estimator independent of any offerors. The written ICE must state how it was derived and the basis of the estimate. The independent cost estimate must be maintained in the official solicitation file.

## **3. Procurement Selection Procedures.**

GoCary will use the following procedures for determining procurement selection:

- a. GoCary shall use written selection procedures for procurement transactions that include a clear and accurate description of the material, product, or service being requested for procurement. The description shall not be written in a way to contain features that unduly restrict competition. The description shall also include the minimum essential characteristics and standards that need to be met to satisfy the intended use of the request.
- b. When GoCary is unable to make a clear and accurate description of the technical requirements, a 'brand name or equal' description can be used to define the characteristics of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
- c. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating the bid or proposal.
- d. GoCary will ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring supplies, equipment and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, GoCary shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.
- e. GoCary has adopted a DBE Program as required by 49 CFR Part 26. The DBE Program sets goals for DBE participation in federally funded contracts, monitors these contracts to determine DBE participation, and reports DBE participation to the FTA. GoCary informs its contractors of these goals and monitors DBE participation by subcontractors.
- f. GoCary shall ensure to the best of its knowledge and belief that none of its FTA assisted contracts for goods or services involve contractors debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. Staff is required to review the System for Award Management (SAM) <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf> before entering into and third-party contracts and provide a copy of the search results to include in the grant or procurement file.

#### **4. Contractor Qualifications.**

The following Federal laws and regulations may affect contractor selection:

- a. **"Responsibility" Requirements.** In addition to the Common Grant Rules that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. Section 5325(j) limits third-party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- b. **Debarment and Suspension.** Debarment and suspension regulations and guidance include the following:
  - i. **DOT Debarment and Suspension Regulations.** Department of Transportation (DOT) regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200 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. See, 2 CFR Part 1200. Thus, the recipient must apply DOT's debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT's regulations that incorporate the requirements of Office of Management and Budget (OMB), "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180.

- c. **General Services Administration (GSA) Excluded Parties List System.** Even though the recipient may collect a debarment and suspension certification from the prospective third-party contractor or include a clause in the third-party contract requiring disclosure, FTA strongly recommends that the recipient check the Excluded Parties List System (EPLS). Now a part of the System for Awards Management (SAM), the EPLS 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.
- d. **State Debarment and Suspension Lists.** A recipient may also treat any prospective contractor or subcontractor listed on a centralized State government debarment and suspension list as irresponsible and ineligible for contract award.

#### **5. Adequate Third-party Contract Provisions.**

The Common Grant Rules requires that all third-party contracts include provisions adequate to form a sound and complete agreement. Compliance with Federal laws and regulations will usually result in the addition of many other contract provisions to ensure compliance with those laws and regulations. All FTA-funded procurements shall include provisions appropriate to the type and complexity of the project to form a sound and complete agreement. At a minimum these include a well-defined statement of work or specification, delivery schedule, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws, rules and regulations as well as all applicable policies and requirements of GoCary. The solicitation document used for a FTA-funded procurement shall include the additional contract provisions to ensure compliance with the federal laws and regulations. GoCary may request additional information from a bidder or offeror before making an award. Additionally, GoCary reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that is considered ambiguous.

## **V. PROCUREMENT METHODS**

FTA Circular 4220.1F sets forth the regulatory guidance which is to be followed in undertaking procurements utilizing FTA funds. The procedures used must comply with State and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients. There are five basic types of procurement techniques that are permitted under these regulations. They are:

### **1. Micro-Purchases.**

This method may be used when the purchase amount is less than \$10,000.00. When a determination has been made that the price is fair and reasonable, FTA permits purchases may be made without competitive quotations, however, the method of determining how the price is fair and reasonable must be documented in the procurement file. Qualified vendors should receive an equitable distribution of the awards. Splitting of procurements is not allowed.

- a. **When Appropriate.** If permitted by State and local law, the recipient may acquire property and services valued at \$10,000 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures. FTA does not intend to imply that the recipient must treat any purchase of \$10,000 or less as a micro-purchase. The recipient may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate.
- b. **Procedures.** The following procedures apply to micro-purchases:
  - i. Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.
  - ii. Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
  - iii. Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

## 2. **Small Purchase Procedures.**

Purchases which meet or exceed \$10,000 but are less than or equal to the threshold of \$250,000 may be made using written quotations, written records of telephone quotations, or informal bids to be opened upon receipt, whenever practical. If small purchase procedures are used, price or rate quotations will be obtained from at least three qualified sources.

- a. **When Appropriate.** Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, \$10,000) but less than the Federal simplified acquisition threshold at 41 U.S.C. Section 403(11), currently \$250,000. These purchases are also exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of \$250,000 or less must be treated as a small purchase. The recipient may set lower thresholds for small purchases in compliance with State and local law, or otherwise as it considers appropriate.
- b. **Procedures.** When using small purchase procedures:
  - i. Competition. The recipient must obtain price or rate quotations from an adequate number of qualified sources.
  - ii. Prohibited Divisions. The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

## 3. **Procurement by Sealed Bids.**

When purchases will exceed the \$250,000 threshold, this method can be used when a complete, adequate, and realistic description of the product or services is available and two or more responsible bidders are able to compete. Bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder, whose bid is lowest in price and conforms to all terms and conditions included in the bid package.

- a. **When Appropriate.** The Common Grant Rule for government recipients states a preference for the sealed bids procurement method for acquiring property, construction, and other services. Sealed bid procurements should be used when the following circumstances are present:
  - i. Precise Specifications. A complete, adequate, precise, and realistic specification or purchase description is available.
  - ii. Adequate Sources. Two or more responsible bidders are willing and able to compete effectively for the business.
  - iii. Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.
  - iv. Price Determinative. 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 determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
  - v. Discussions Unnecessary. 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. This contrasts with Competitive Proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre-bid conference with prospective bidders before bids have been received can be useful.
- b. **Procurement Procedures.** The following procedures apply to sealed bid procurements:
  - i. Publicity. The invitation for bids is publicly advertised.
  - ii. Adequate Sources. Bids are solicited from an adequate number of known suppliers.
  - iii. Adequate Specifications. The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in enough detail that a prospective bidder will be able to submit a proper bid.
  - iv. Sufficient Time. Bidders are allowed enough time to prepare bids before the date of bid opening.
  - v. Public Opening. All bids are publicly opened at the time and place prescribed in the invitation for bids.
  - vi. Fixed Price Contract. 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.
  - vii. Rejection of Bids. Any or all bids may be rejected if there is a sound, documented business reason.

#### **4. Procurement by Competitive Proposal/Request for Proposals (RFP).**

This method of procurement is used when conditions are inappropriate for use of sealed bid procedures. With competitive proposals, Offerors typically compete for an award on the basis of criteria including cost. For competitive negotiations including architects, engineers, and related services, selection of the most qualified



competitor is based upon evaluation of qualifications. GoCary must identify their evaluation factors and indicate the relative importance that each has towards the award.

- a. **When Appropriate.** Competitive proposals should be used when any of the following circumstances are present:
  - i. Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
  - ii. Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.
  - iii. Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
  - iv. Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with Sealed Bids (Formal Advertising) procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.
- b. **Procurement Procedures.** The following procedures apply to procurements by competitive proposals:
  - i. Publicity. The request for proposals is publicly advertised.
  - ii. Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
  - iii. Adequate Sources. Proposals are solicited from an adequate number of qualified sources.
  - iv. Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
  - v. Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.
  - vi. Best Value. If permitted under its State or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the

“best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors. Apart from the statutory requirement that the contract must support the recipient’s public transportation project consistent with applicable Federal laws and regulations, FTA does not require any specific factors or analytic process.

## **5. Procurement by Noncompetitive Proposals (Sole Source).**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals. Sole-source, single-bid and brand name or equal awards can be used only with appropriate documentation. In the case of a sole-source award, the documentation should be a sole-source justification, which includes a cost analysis. With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. For brand name or equal awards, the procurement specification should list the product’s salient or unique characteristics and allow an equal product to be offered. A contract change or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with procurement procedures.

## **6. Architectural Engineering (A&E) Services and Other Services.**

FTA’s enabling legislation at 49 U.S.C. Section 5325(b)(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, but also for 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, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

- a. **Qualifications-Based Procurement Procedures.** The following procedures apply to qualifications-based procurements:
  - i. Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror’s qualifications are evaluated to determine contract award.
  - ii. Price. Price is excluded as an evaluation factor.
  - iii. Most Qualified. Negotiations are first conducted with only the most qualified offeror.
  - iv. Next Most Qualified. 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.
  - v. Effect of State Laws. 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.

## **7. Piggybacking.**

A recipient may find that it has inadvertently acquired contract rights in excess of its needs. The recipient may assign those contract rights to other recipients if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions.

- a. Piggybacking is permissible under the following circumstances:
  - i. The solicitation and contract include an assignability clause that allows for the assignment of all or part of the specified deliverable items.
  - ii. The quantities to be ordered were included in the original bid and evaluated as part of the contract award decision. Note that “piggybacking” is not permissible when the action would call for an increase in quantities that were not originally bid on and not originally evaluated as part of the contract award. Such an order for additional quantities - sometimes referred to as “tag-ons” - would constitute a non-competitive procurement. The use of tag-ons is prohibited and applies to the original buyer as well as to others.
  - iii. The contract being accessed by the piggybacking procedure contains the clauses required by Federal regulations.
  - iv. The contractor has submitted the “Certifications” required by Federal regulations with its original bid/proposal.
  - v. The procurement in other respects meets Federal requirements.

## 8. Rolling Stock.

The following Federal laws and regulations impose requirements that may affect rolling stock procurements:

- a. **Accessibility.** Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38.
- b. **Transit Vehicle Manufacturer Compliance with DBE Requirements.** Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA’s DBE requirements.
- c. **Minimum Service Life.** FTA requires each recipient to maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that the recipient may acquire. See, the most recent versions of FTA Circular 5010.1, “Grant Management Requirements,” FTA Circular 9030.1, “Urbanized Area Formula Program: Grant Application Instructions,” and FTA Circular 9300.1, “Capital Program: Grant Application Instructions,” that addresses minimum service life for vehicles.
- d. **Spare Ratios.** While all FTA assistance for third-party procurements must be limited to property and services the recipient will use in the near future, FTA is concerned that the recipient does not acquire an excessive number of spare vehicles not regularly used in public transportation service.
- e. **Air Pollution and Fuel Economy.** Each third-party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, “Control of Air Pollution from Mobile Sources,” 40 CFR Part 85; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and

In-Use Motor Vehicle Engines,” 40 CFR Part 86; and EPA regulations, “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

- f. **Pre-award Review and Post Delivery Review.** Each third-party contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases,” 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m).
- g. **Bus Testing.** Each third-party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of 49 U.S.C. Section 5318, as amended by MAP-21, and FTA regulations, “Bus Testing,” 49 CFR Part 665.
- h. **In-State Dealers.** The recipient may not limit its third-party bus procurements to its in-State dealers, 49 U.S.C. Section 5325(i). Although FTA respects State licensing requirements, FTA is prohibited by law from providing FTA assistance to support bus procurements that have the result of limiting competition to entities that have been able to obtain a State license.
- i. **Basis for Contract Award.** As permitted by 49 U.S.C. Section 5325(f), the recipient may award a third-party contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.
- j. **Time Limits for Options on Rolling Stock Contracts.** MAP-21 amended 49 U.S.C. Section 5325(e)(1) by adding subsections (A) and (B), retaining the five (5) year option for the procurement of buses. Consequently:
  - i. Buses. A recipient:
    - a) May enter into a multi-year contract to acquire buses or replacement parts, with an option not exceeding five(5) years to buy additional buses or replacement parts, 49 U.S.C. Section 5325(e)(1)(A), but
    - b) May not exercise the option to acquire buses or replacement parts later than five (5) years after the date of its original contract.

FTA interprets the five-year period as covering the recipient’s “material requirements” for rolling stock and replacement needs from the first day when the contract becomes effective to its “material requirements” at the end of the fifth year. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that a recipient’s “material requirements” for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than a recipient’s material requirements for the applicable five-year period. This does not mean the recipient must obtain delivery, acceptance, or even fabrication in five years. Instead it means only that FTA limits a contract to purchasing no more than the recipient’s material requirements for rolling stock or replacement parts for five or seven years based on the effective date of the contract.

## 9. **Design-Bid-Build.**

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

- a. **Design Services.** For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law and regulations.
- b. **Construction.** Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

#### 10. Design-Build.

Currently, North Carolina state statutes do not meet procurement requirements and this procurement method should not be pursued. If state statutes are amended to comply with procurement requirements, please refer to FTA Circular 4220.1F for applicable guidelines.

#### 11. Revenue Contracts.

A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. In order to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:

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

## VI. RECEIPT, EVALUATION, AND AWARD OF BID PROPOSALS

### 1. Evaluations.

The following standards apply:

- a. **General.** When evaluating bids or proposals submitted, FTA expects the recipient to consider all evaluation factors specified in its solicitation documents and evaluate the bids or offers only on the evaluation factors included in those solicitation documents. The recipient may not modify its evaluation factors after bids or proposals have been submitted without re-opening the solicitation.
- b. **Options.** In awarding the contract that will include options, the following standards apply:

- i. Evaluation Required. In general, FTA expects the recipient to evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

## 2. Cost analysis and price analysis.

The Common Grant Rules requires the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

- a. **Cost Analysis.** The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.
  - i. Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.
  - ii. Profit. FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis. To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- b. **Price Analysis.** If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. The price analysis for micro-purchases may be limited. Similarly, the recipient may use an abbreviated price analysis for small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

## VII. CONTRACT ADMINISTRATION

All contracts are subject to Town of Cary Standard Terms & Conditions, including purchase orders and other standard contracts utilized by the Town.



## 1. **Record keeping.**

The Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. The Common Grant Rules require the recipient to maintain these records for three years after the recipient and subrecipients, if any, have made final payment and all other pending matters are closed. The recipient must also prepare, maintain, and distribute the following documents as necessary:

- a. **Procurement History.** The Common Grant Rules require the recipient to maintain and make available to FTA written records detailing the history of each procurement, as follows:
  - i. **Procurement Method.** A governmental recipient must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.
  - ii. **Contract Type.** A governmental recipient must state the reasons for selecting the contract type it used (fixed price, cost reimbursement, and so forth);
  - iii. **Contractor Selection.** A governmental recipient must state its reasons for contractor selection or rejection. FTA expects the recipient to include a justification for each noncompetitive award. Governmental recipients should include a written responsibility determination for the successful contractor; and
  - iv. **Cost or Price.** Each recipient (government and non-government) must evaluate and state its justification for the contract cost or price.
  - v. **Reasonable Documentation.** The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements. Procurements that are more substantial may require extensive documentation.
- b. **Access to Records.** Apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and DOT officials, the U.S. Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

## 2. **Change of scope.**

FTA requires a grant amendment if the request changes the overall scope of a grant or changes the project scopes within a grant. Examples and an exception to changes in scope that result in a grant amendment include:

- a. A change in the quantity of items to be purchased or constructed that materially changes the purpose or intent of the approved grant.
- b. The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.
- c. The addition of an ALI that results from an amendment to the approved TIP/STIP.
- d. Exception to change in scope: For earmarks, all changes to the grant after award must be consistent with the original intent of the Congressional language. Your FTA Regional Office will assist you in making this determination. For example, if the earmark is only for a facility, a grant

amendment cannot be executed to add a scope for vehicles without explicit direction from Congress to FTA to change the earmark.

### 3. **Payment Provisions.**

- a. **Advance payments.** Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:
  - i. **Use of FTA Assistance Prohibited.** The recipient may not use FTA assistance to make payments to a third-party contractor before the contractor has incurred the costs for which the payments would be attributable.
  - ii. **Exceptions for Sound Business Reasons.** Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
    - a) **Adequate Security for Advance Payments.** FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.
    - b) **Customary Advance Payments.** FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

In summary, if there are sound business reasons justifying the advance payment and adequate security for the payment, FTA will generally concur in a written request for an exception.

- b. **Progress payments.** Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has enough written documentation to substantiate the work for which payment is requested. For construction contracts, payments may be made on a percentage of completion method. This payment method is prohibited for non-construction contracts.
  - i. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.
  - ii. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
  - iii. Percentage of Completion Method. The Common Grant Rules requires that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

#### 4. **Liquidated damages.**

FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.

#### 5. **Bonding.**

The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

- a. **Bid Guarantee.** Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. 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.

- b. **Performance Bond.** Both FTA and the Common Grant Rules generally require the third-party contractor to obtain a performance bond for 100 percent of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third-party contract.
- c. **Payment Bond.** The Common Grant Rules generally require the third-party contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third-party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
  - i. Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million,
  - ii. 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
  - iii. More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.
- d. **Acceptable Sureties.** The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- e. **Reduced Bonding.** FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in FTA Circular 4220.1F. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- f. **Excessive Bonding.** Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient’s “excessive bonding” requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient’s bonding policies far exceed those described; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

## 6. Existing Contracts.

Occasionally, a recipient may find it advantageous to use existing contract rights. As used in FTA circular 4220.1F, “existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto, and does not include State or local government purchasing schedules or purchasing contracts as discussed in sections 4, 5, and 6 of this Chapter.

- a. **Permissible Actions.** Within the conditions set forth below, FTA permits a recipient to use existing contract rights held by another recipient:
  - i. Exercise of Options. A recipient may use contract options held by another recipient with the following limitations:
    - a) **Consistency with the Underlying Contract.** FTA expects the recipient to ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
    - b) **Price.** The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
    - c) **Awards Treated as Sole Source Procurements.** The following actions constitute sole source awards:
      - 1) **Failure to Evaluate Options Before Awarding the Underlying Contract.** If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
      - 2) **Negotiating a Lower Option Price.** Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA’s third-party contract standards for sole source awards.

## VIII. CONTRACT PROVISIONS

Before a recipient may use FTA assistance to support the acquisition of property or services, it must comply with all applicable Federal laws and regulations, whether or not addressed in the Common Grant Rules. Some of those laws and regulations will affect the third-party contractor providing the property or services, or even determine which entities may qualify as a third-party contractor. Other laws and regulations will affect the nature of the property or services to be acquired or the terms under which the property or services must be acquired. A recipient may not use FTA assistance to support acquisitions that do not comply with all applicable Federal requirements.

FTA’s Master Agreement contains a current, but not all-inclusive, description of statutory and regulatory requirements that may affect a recipient’s procurement (such as Disadvantaged Business Enterprise (DBE) and Clean Air requirements). The Master Agreement states that applicable Federal requirements will apply to

project participants to the lowest tier necessary to ensure compliance with those requirements. A recipient will also need to include applicable Federal requirements in each sub-agreement, lease, third-party contract, or other document as necessary. For specific guidance on cross-cutting requirements administered by other Federal agencies, FTA recommends that the recipient contact those agencies.

The recipient may also use the checklists in Appendix C of FTA circular 4220.1F as a reminder of Federal requirements, and the matrices in Appendix D of FTA circular 4220.1F for a list of clauses and provisions required by Federal laws and regulations. The recipient may also refer to the Model Clauses in FTA's "Best Practices Procurement Manual" but cautions the recipient also to check the latest edition of FTA's Master Agreement to determine which provisions have been added, changed, or rescinded.

Some of the more typical requirements and restrictions that will affect the use of FTA assistance to finance a recipient's third-party contracts include:

- Contractor Qualifications
- Debarment and Suspension
- Conflict of Interest
- Lobbying Certification and Disclosure
- Federal Civil Rights Laws and Regulations
- Socio-Economic Development
  - Disadvantaged Business Enterprises (DBES)
  - Small and Minority Firms and Women's Business Enterprises
  - Fair Labor
  - Veterans Employment
- American with Disabilities Act
- Bonding Requirements
- Bus Testing
- Davis Bacon Labor Standards
- Drug and Alcohol Testing
- Federal Motor Vehicle Safety Standards

### **1. Buy America.**

FTA's "Buy America" law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in the FTA assisted project. If FTA funds are used for the project, Buy America requirements apply to all procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the recipient disregard FTA's Buy America requirements. Property that



the contractor acquires to fabricate a deliverable for the recipient, such as tools, machinery, and other equipment or facilities, is not subject to FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third-party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether the property acquired would comply with FTA's Buy America regulations. FTA's Buy America statute does not pre-empt State laws with stricter requirements on the use of foreign articles, materials, and supplies.

FTA cautions that its Buy America regulations that apply to FTA assisted third-party procurements, published at 49 CFR Part 661, differ from Federal "Buy American Act" regulations that apply to direct Federal procurements, published in the FAR at 48 CFR Chapter 1, Subparts 25.1 and 25.2. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any FTA assisted procurement.

- a. **Certification requirements for procurement of steel or manufactured products.** If steel, iron, or manufactured products (as defined in 49 CFR §661.3 and 661.5) are being procured, the appropriate certificates as set forth in Appendix C and Appendix D of FTA Circular 42201.F, shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR §661.13(b).
- b. **Pre-award audit requirements.** A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under 49 CFR §663 is complete before the recipient enters into a formal contract for the purchase of such rolling stock. A pre-award audit includes:
  - i. A Buy America certification as described in 49 CFR §663.25. A pre-award Buy America certification is a certification that the recipient keeps on file that:
    - a) There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
    - b) The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists-
      - 1. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
      - 2. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
  - ii. A purchaser's requirements certification as described in 49 CFR §663.27. A pre-award purchaser's requirements certification is a certification a recipient keeps on file that:
    - a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and
    - b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

- iii. Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in 49 CFR §663.41 or 49 CFR §663.43.
- c. **Post-delivery Buy America certification.** A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under 49 CFR §663 is complete before title to the rolling stock is transferred to the recipient. A post-delivery audit under includes
  - i. A post-delivery Buy America certification as described in 49 CFR §663.35. A post-delivery Buy America certification is a certification that the recipient keeps on file that:
    - a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
    - b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
      - 1. Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
      - 2. The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.
  - ii. A post-delivery purchaser's requirements certification as described in §663.37 of this part. A post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that:
    - a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall:
      - 1. Provide accurate records of all vehicle construction activities; and
      - 2. Address how the construction and operation of the vehicles fulfills the contract specifications.
    - b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.
    - c) For procurements of:
      - 1. Ten or fewer buses; or
      - 2. Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or
      - 3. Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.
  - iii. When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in 49 CFR §663.41 or 49 CFR §663.43.

- d. **Post-delivery audit review.** If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law. This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

## 2. **Protections against performance difficulties.**

The Common Grant Rule for governmental recipients authorizes FTA to require each governmental recipient to include contract provisions that would reduce potential problems that might occur during contract performance. In addition to other clauses that may be approved by the Office of Federal Procurement Policy, FTA expects the governmental recipient to include provisions as described below:

- a. **Changes.** FTA expects a governmental recipient to include changes and changed conditions provisions or clauses in most contracts, except for routine supply contracts.
- b. **Remedies.** The Common Grant Rule for governmental recipients authorizes FTA to require remedies. Accordingly, FTA expectations are as follows:
  - i. Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met and must be specified in the solicitation and contract.
  - ii. Violation or Breach. Third-party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.
  - iii. Suspension of Work. FTA may require provisions pertaining to suspension of work.
  - iv. Termination. Termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000.

## IX. **CONTRACTOR/SUBRECIPIENT MONITORING**

The purpose of this section is to assist GoCary and its Third-Party Contractor or Lessee in maintaining compliance for federally funded projects and understanding the requirements and responsibilities of being a Third-party Contractor or Lessee receiving funds through federally funded projects. All grant management will be conducted in accordance with FTA C 5010.1D and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Title 2 CFR §200. GoCary does not have any direct recipients or subrecipients, however if applicable the following guidelines would also apply.

Any grantee under FTA programs is required to comply with all applicable Federal civil rights statutes and with the implementing regulations for the statutes. FTA implements the Civil Rights Act of 1964 by prohibiting discrimination under projects, programs or activities receiving financial assistance because of race, color, creed, national origin, sex or age. The laws include: *Title VI of the Civil Rights Act of 1964, Equal Employment Opportunity, Disadvantaged Business Enterprise and Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA).*

The requirements for Civil Rights compliance are extended to Third-party Contractors. Assurances under Title VI and the other civil rights requirements are included in the required Annual Certifications and Assurances and in the contract with GoCary. Third-party Contractors are also required to identify any lawsuits or complaints alleging discrimination in service filed with the grantee. Civil rights monitoring will concentrate on how the grantee is providing service. Title VI also assures that funds are passed through to Third-party Contractors and their project without regard to race, color, or national origin.

## 1. Definitions.

The following definitions are used in this section:

- a. **Direct Recipient.** The term Direct Recipient refers to an entity that receives funding directly from FTA.
- b. **Subrecipient.** The term Subrecipient refers to an entity that receives a subaward (or sub-agreement) from a pass-through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal Awards directly from a federal awarding agency.
- c. **Third-party Contractor/Lessee.** The term Third-party Contractor/Lessee refers to any entity that is awarded a contract, purchase order, or lease agreement from the Direct Recipient or Subrecipient financed in whole or in part with federal assistance awarded by FTA.

## 2. Contractor/Subrecipient Monitoring.

Quarterly monitoring of contractors shall be conducted by GoCary to ensure that all federal guidelines are being adhered to when using federal funds. A project invoice is required along with any detailed accounting of the expenditure of the local match if applicable.

- a. In addition to State or Federal program specific monitoring requirements, all monitoring activities should address the following areas:
  - i. All applicable requirements of Title VI of the Civil Rights Act of 1964, as defined in the current Title VI Compliance Commission Advisory Memorandum.
  - ii. The applicable core monitoring areas, as defined by the Uniform Guidance. Currently, the core monitoring areas include but are not limited to:
    - a) Activities allowed or unallowed
    - b) Allowable costs/cost principles
    - c) Cash management
    - d) Eligibility
    - e) Equipment and real property management
    - f) Matching, Level of Effort, Earmarking
    - g) Period of Performance
    - h) Procurement and Suspension and Debarment
    - i) Program income
    - j) Reporting
    - k) Subrecipient Monitoring (Currently, GoCary does not have any subrecipients)
    - l) Reporting and special tests and provisions

## Appendix A: FTA Change Order Review Checklist Addendum

### **FTA CHANGE ORDER REVIEW CHECKLIST ADDENDUM** (To be completed in conjunction with Contract Checklist for Change Orders)

**Date:** \_\_\_\_\_

**Contract Title/Number:** \_\_\_\_\_

**Reviewer:** \_\_\_\_\_

**New Contract Total:** \_\_\_\_\_

**Dollar Value Increase:** \_\_\_\_\_

**Length of Time Extension Granted:** \_\_\_\_\_

**New Performance Period End Date:** \_\_\_\_\_

Change Order Checklist	Category			Comment
	Yes	No	N/A	
1. In-House Estimate Prepared				
2. Project Manager Approval				
3. Scope Meeting Held				
4. Work Authorized Within Contract Scope				
5. Scope of Change Adequate for Bidding				
6. Contractor Proposal Includes Impact Costs, Price				
7. Cost Analysis Conducted				
8. If Price > 10% of ICE, Rationale Provided				
9. Negotiation Memorandum				
10. Written Record of Change				
11. Signed Change Order in File				
12. Evidence of Board Approval Prior to Initiation of Changed Work <i>(if required)</i>				
13. Notice to Proceed on File				
14. No Evidence of Arbitrary Action				

**Additional Comments:**

## Appendix B: Applicability of Third-Party Contract Provisions

### APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims /Civil and Criminal Fraud	All	All	All	All	All
Access to Third-party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All >\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000



TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Safety sensitive functions related to transit operations.			
Alcohol Misuse and Testing		Safety sensitive functions related to			

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
		transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Bus Testing Certification			All procurements of new model transit buses and vans and existing models being modified with a major changeover changes.		
TVM Certifications			All		
Pre-award Review			All		
Pre-award Buy America Certification			>\$100,000		
Pre-award Purchaser's Requirement			All		
Post Delivery Review			All		
Post Delivery Buy America Certification			>\$100,000		

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Post Delivery Purchaser's Requirement			All		
On-Site Inspector's Report			<ul style="list-style-type: none"> <li>- 10 or fewer vehicles;</li> <li>- 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer;</li> <li>- Any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.</li> </ul>		
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	Procurements exceeding \$100,000 where contractor engages in lobbying activities.

## Appendix C: Procurement History File Index

<b>PROJECT:</b>		
<b>DEPT CONTACT:</b>		
<b>PHONE:</b>		
<b>EMAIL:</b>		
<b>DEPT APPROVAL:</b>		
<b>BUDGET APPROVAL:</b>		
<b>INITIAL PROJECT COST:</b>		
<b>LEGAL APPROVAL:</b>		
<b>FINANCE/PROCUREMENT APPROVAL:</b>		
<b>PRE-BID/PRE-PROPOSAL CONFERENCE:</b>	YES	IF YES, LOCATION, DATE & TIME:
	NO	

A – PRE-AWARD			
	<b>Independent Cost Estimate (ICE)</b>		<b>Pre-Proposal/Pre-Bid Meeting Documents</b>
	<b>Procurement Method (Decision Matrix Attached)</b>		- Sign-In Sheets
	- RFP		<b>Required Forms</b>
	- RFQ		
	- IFB		
	- Request for Quotes		
	- Sole Source (Justification Attached)		<b>IPS Web Publication (if required)</b>
	<b>Contract Type (Rationale for selection attached)</b>		- Addenda
	- Firm Fixed		- Solicitation Released:
	- Cost Reimbursement		- Comments Due:
	- Time & Materials		- Response Due:
	<b>Cost/Price Analysis</b>		- Evaluation Period:
	- Cost Analysis (include Sole Source Justification if applicable)		- Interviews:
	- Price Analysis (attach quotes)		- Final Selection Made:
	<b>Solicitation Document</b>		<b>Bid Opening</b>
	<b>Local &amp; State Regulatory Requirements</b>		<b>Bid Tabulation / Evaluation</b>
	- Sample Contract or PO Terms & Conditions		<b>Responsiveness Determination</b>
	<b>Federal Grant Requirements</b>		<b>Responsibility Determination</b>
	- Davis Bacon		<b>Recommendation of Award</b>
	- DBE		<b>Excluded Parties List verified via System for Award Management (documentation attached)</b>
	- Brooks Act		<b>BAFO</b>
	- Environmental		<b>Scope of Work</b>
	- Protest Policy		<b>Contract Negotiation</b>
	- Buy America		<b>Price Negotiation</b>
	- Notified Vendors/Bidders List		

<b>B – AWARD PROCESS</b>			
	<b>Notice of Award</b>		<b>Protests Received</b>
	- Unsuccessful Proposals/Bids & Rejection Letters		<b>Pre-Construction/Project Meeting:</b>
	<b>Notice to Proceed</b>		<b>Board Reports</b>
	<b>Return Bond / Check</b>		<b>Project Canceled</b>
<b>C – CONTRACT</b>			
	<b>Executed Contract/Purchase Order</b>		- Approved Requisition
	- Director Review		- Certified Payrolls
	- Bonds & Insurance		- Invoices/Encumbrance/PO Releases
	- Federal/State/Local Documents		
<b>D – CHANGE ORDER(S)</b>			
	<b>Change Order Log (Cumulative)</b>		- Federal Requirements
	<b>Change Order/Contract Amendment</b>		o Davis Bacon
	- ICE		o DBE
	- Cost/Price Analysis		o Brooks Act
	- Sole Source (Justification Attached)		o Environmental
	- Scope of Work		o Excluded Parties List verified via System for Award Management & documentation attached
	- Local & State Requirements		o Buy America
<b>E – CLOSEOUT</b>			
	<b>Claims/Release of Claims</b>		<b>Final Acceptance</b>
	<b>Notice of Final Settlement</b>		<b>Substantial Completion Certificate</b>
	<b>Vendor Performance Report</b>		<b>Termination Documentation – Stop Orders</b>
<b>F – MISCELLANEOUS CORRESPONDENCE</b>			
	<b>Cure Notices</b>		<b>Interdepartmental Correspondence</b>
	<b>Project Status Reports</b>		<b>Associated A &amp; E Information</b>
	<b>Deposit Information</b>		<b>Public Records Requests</b>

## Appendix D: Contract Type – Rationale for Selection

### Contract Type – Rationale for Selection

PROJECT:

DEPT

CONTACT:

PHONE:

EMAIL:

Description of goods or services to be procured:

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Rationale for method of procurement:

☐ IFB    ☐ RFP    ☐ RFQ    ☐ Quote    ☐ Sole Source    ☐ Other

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Selection of contract type:

☐ PO    ☐ Contract

Type: \_\_\_\_\_

## Appendix E: Single & Sole Source Justification Request



<b>DATE:</b> <input type="text"/>	<b>PROJECT MANAGER NAME:</b> <input type="text"/>
<b>PROPOSED CONTRACTOR OR VENDOR</b> Company: <input type="text"/> Address: <input type="text"/> <input type="text"/> Web Address: <input type="text"/> Contact Name: <input type="text"/> Phone: <input type="text"/> E-mail: <input type="text"/>	<b>DATE DELIVERY OR SERVICE IS NEEDED:</b> <input type="text"/>
<b>DESCRIPTION OF GOODS AND/OR SERVICES REQUIRED</b> <input type="text"/>	
<b>REASON FOR REQUESTING A SINGLE OR SOLE SOURCE</b> (Check applicable box and attach documentation or provide explanation below.) <input type="checkbox"/> Unique or innovative concept <input type="checkbox"/> Patent or Restricted Data Rights <input type="checkbox"/> Substantial duplication of costs (include quantification) <input type="checkbox"/> Unacceptable Delay <input type="checkbox"/> Compatibility or warranty considerations <input type="checkbox"/> Unusual and Compelling urgency (this does not include poor planning)	



<b>EXPLANATION OF REASON FOR REQUESTING A SINGLE OR SOLE SOURCE:</b> (Please explain in detail. Attach additional pages if needed.)	
<b>EXPLANATION OF HOW PRICE WAS DETERMINED TO BE FAIR AND REASONABLE</b> (ATTACH INDEPENDENT COST ESTIMATE (ICE)):	
<b>SIGNATURES</b>	
By signing this document, I acknowledge that the statements above are true.	
<b>Project Manager Signature:</b>	<b>Date:</b>
<b>Printed Name:</b>	
<b>Title:</b>	
<b>Contracting Signature:</b>	<b>Date:</b>
<b>Printed Name:</b>	
<b>Title:</b>	

## Clarifications:

1. The Contracting Office is required to endeavor to obtain as full and open competition as possible on all purchases and sales. Therefore, we will scrutinize all single/sole source requests and seek to compete whenever possible.
2. Furthermore, the Town of Cary, GoCary Transit is required by the Federal Transit Administration's Circular 4220.1F to "provide for full and open competition when soliciting bids or proposals."
3. Emergency/Unusual or compelling urgency indicates possibility of injury, financial or otherwise, to the Town and/or GoCary. It is a situation that creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemic, riots, equipment failures, or other such reasons as may be proclaimed by a using agency. The existence of such condition creates an immediate and serious need for supplies, equipment, materials, and services that cannot be met through normal procurement methods and the lack of which would threaten the function of Town government, GoCary Transit, or the health, safety, and welfare of Town residents.
4. Please remember, the Town and GoCary are public entities. Personal preferences should not dictate sourcing.
5. Where there is demand for a product or service, there is normally a market with numerous suppliers. In many cases, we may not know of multiple sources, but this does not mean they do not exist or that competition should not be attempted. Citing "Only one responsible source" must include an explanation describing why the product or service must be provided by a particular source. It should not simply say that we do not know of any other qualified vendors or contractors.
6. In some circumstances, we may assume sources other than a designated single source would incur additional costs, rendering them non-competitive. It is often better to solicit competition and conclude this from analyzing actual proposals.
7. Please keep in mind, competition is good business and creates a fair and level playing field for all.