

CHAPTER 12:

FEDERAL PURCHASING POLICY

Revised 4/20

12A) Introduction

The primary function of the City of Amarillo (COA) Procurement Policy is to ensure that good internal control over purchases and inventory exists, that the legal and ethical standards of the City of Amarillo are met, and that good relationships with suppliers are maintained. Procurement will not always select items with the lowest price, but items selected should give the COA the best possible value within the bounds of the law and the procurement procedures of the state and federal governments.

This policy is written to comply with the Federal Transit Administration (FTA) Master Grant Agreement, FTA Circular #4220.1F, the FTA Best Procurement Practices Manual (BPPM), 2FR 200, and the COA Purchasing Policy. If there is a discrepancy between Chapter 12 or any other part of the COA Purchasing Manual, the Federal policy will be followed. This Policy is designed to guide the City, Facilities, Engineering, Purchasing and any other Department within the COA working on a procurement that includes Federal funds thru the procurement process. The Federal Procurement Procedures and the procedures outlined in the State of Texas Statutes, whichever one is the strictest, will be followed in all COA - Federal Procurements.

12B) FTA Third Party Contracting Guide

FTA has developed Circular 4220.1F “Third Party Contracting Guidance” to assist its recipients and their subrecipients in complying with the various Federal laws and regulations that affect their FTA-assisted procurements. The Circular applies to third party contracts and subcontracts of all other FTA recipients and their subrecipients, including regional public transportation authorities that are not a State.

Even though a recipient or sub recipient is not a State, it may use its own procurement procedures, if those procedures conform to applicable Federal law and regulations, including the applicable Common Grant Rule. FTA C 4220.1F sets forth the requirements a recipient and sub recipient must adhere to in the solicitation, award and administration of its third-party contracts. This document is located at: <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

These FTA requirements are incorporated into the COA’s purchasing and contracting policies and procedures manual. In this Chapter you will find procurement forms and the required contract clauses that incorporate 4220.1F and the COA Purchasing Manual.

The COA shall use procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, and to any other requirements of grants allocated to the COA. If there is no State law on an aspect of procurement, then Federal contract law principles will apply.

The COA is the recipient of FTA funds. The COA ensures that FTA funded contracts are structured to adhere to the requirements outlined in FTA C 4220.1F. This document describes the required procedures for all procurement utilizing federal funds from the FTA.

12C) Amarillo City Procurement Forms

Method of Procurement Decision Matrix Form

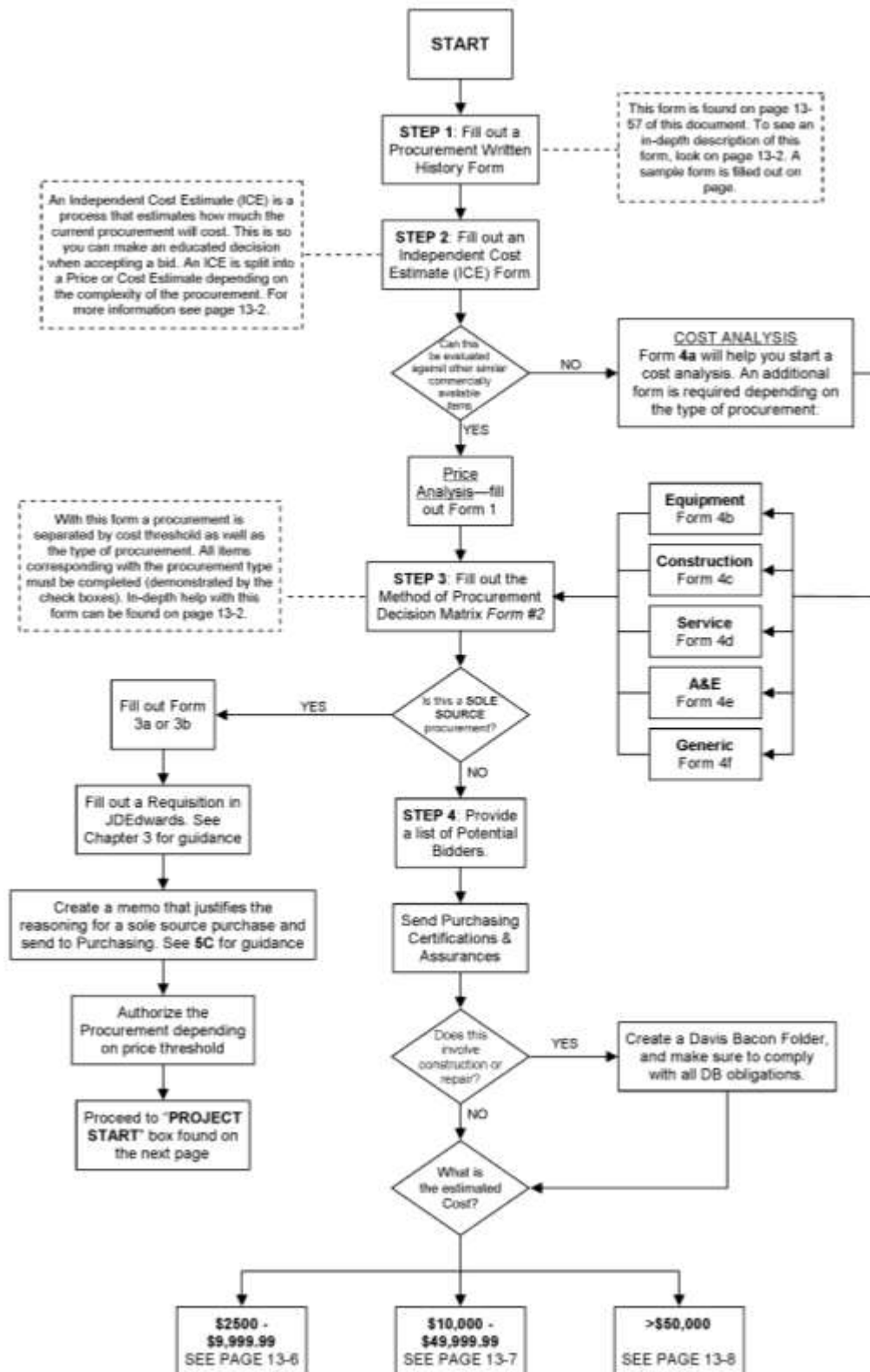
The Method of Procurement Decision Matrix is completed by the City Department. If the procurement is a Micro Purchase – below \$2,500.00, then the forms are not necessary. If the purchase is greater than or equal to \$2,500.00, complete the section under Competitive Procurement and select Method 1, 2 or 3.

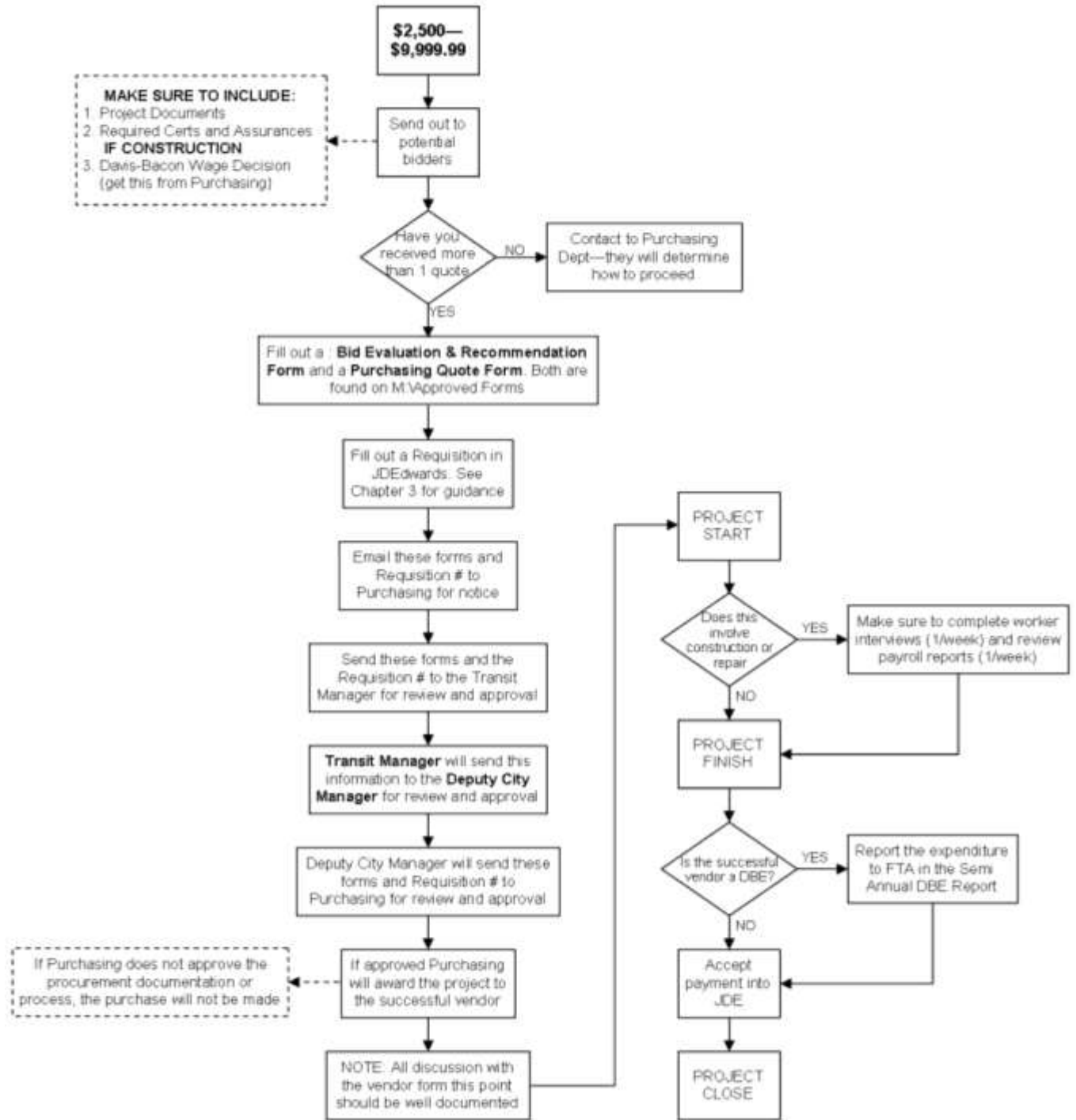
- **Written History Form**

- When a procurement need is identified, the City Department will start with the Written History form. The City and Purchasing Departments update the form throughout the procurement process noting the following information related to the procurement.
 - a. Procurement Method. The City Department 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;
 - b. Contract Type. The City Department must state the reasons for selecting the contract type it used (fixed price, cost reimbursement, and so forth);
 - c. Contractor Selection. The City Department must state its reasons for contractor selection or rejection. For procurements exceeding \$2,500.00, the City Department should include a written responsibility determination for the successful contractor; and
 - d. Cost or Price. The City Department must evaluate and state its justification for the contract cost or price.
 - e. Reasonable Documentation. The extent of documentation should be reasonable. Documents included in the 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. For example, a receipt or bill accompanying a \$100 credit card purchase might contain all the required information to support the procurement. Procurements that are more substantial may require extensive documentation. The COA uses checklists to ensure that the required documents are contained in the procurement file.

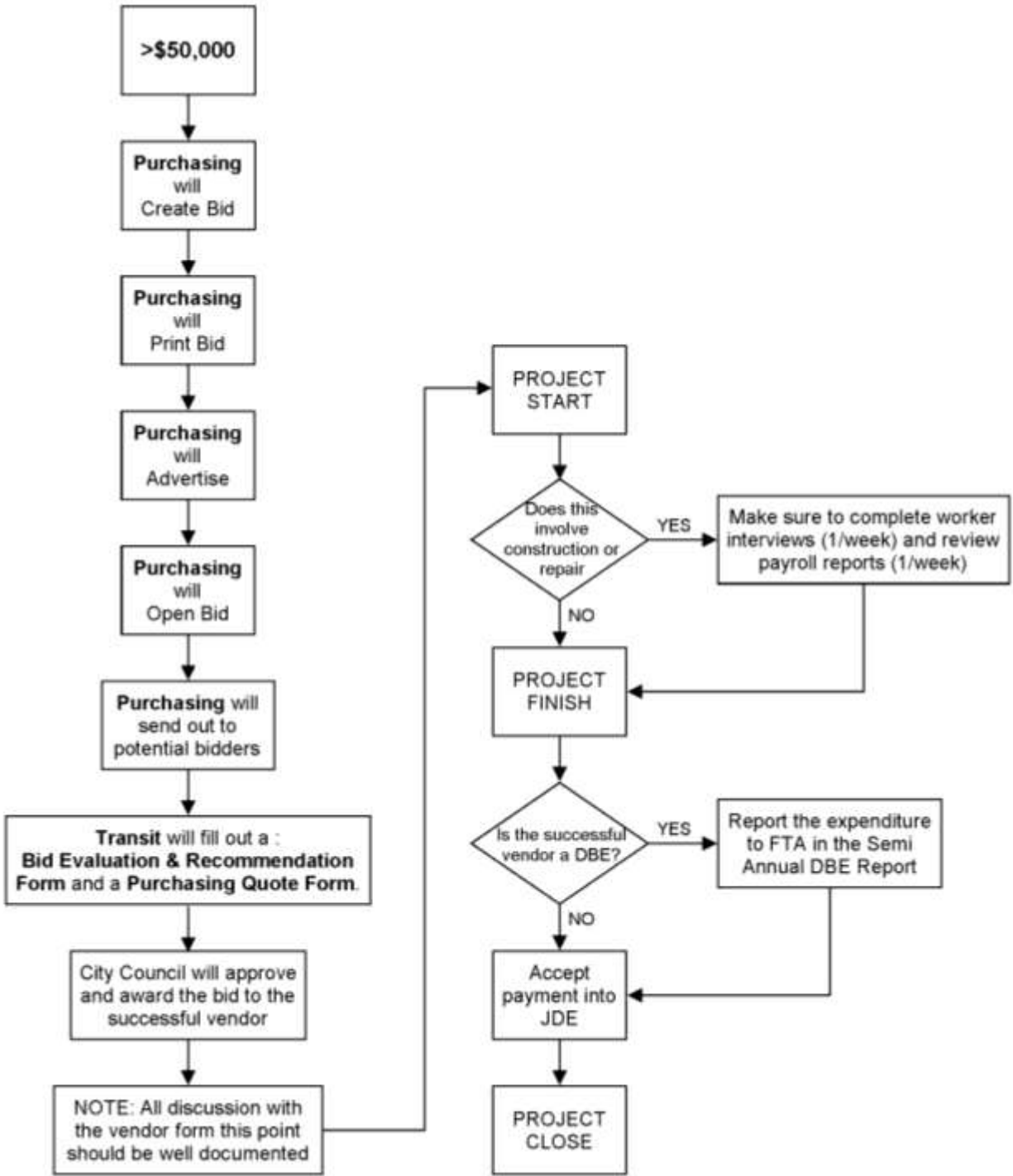
- Independent Cost Estimate (ICE) Form
 - The ICE is developed by the City Department when planning the next year's budget or before a procurement that exceeds \$3,500.00 is initiated. If a COA staff member is planning a purchase that exceeds \$3,500 – the ICE form must be completed. The staff member must decide if a price or cost analysis is needed. A price analysis is adequate when the product or service can be evaluated against other commercially available items of similar products or services. If that is the case – for example, the purchase is for folding tables and there are several bids to consider, a cost analysis is not necessary.
 - Per FTA Circular 4220.1F, Chapter VI, paragraph 6, the Common Rule requires the subrecipient to perform a *Price or Cost Analysis* in connection with *every Small Purchase or Competitive Proposal*. The most common way to make this determination is to compare offers to your *Independent Cost Estimate (ICE)*. An ICE serves as your benchmark for evaluating the reasonableness of the vendor's proposed costs or prices and can range from a simple budgetary estimate to a complex estimate.
- Price/Cost Analysis Form
 - The City Department will then complete a cost analysis if one is needed. A price analysis is adequate when the product or service can be evaluated against other commercially available items of similar products or services. A price analysis may not have enough detail for all projects and a Cost Analysis may be required.

Amarillo City Procurement Decision Tree









**City of Amarillo – City
Method of Procurement Decision Matrix**

To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below. In order to use any given method, **all elements in that section must apply** (except for sole source, where only one item must apply).

Micro Purchase (Competitive quotes not required)	Competitive Procurement (Competitive bids, or proposals required)	Non-Competitive Procurement
<input type="checkbox"/> Total cost is <i>below</i> the micro purchase threshold of \$2,500.	<p>If all three of these conditions are true, select Procurement Method 1, 2, or 3 (below). See Chapter 5 of the COA Procurement Manual for definitions and further guidance.</p> <input type="checkbox"/> Amount is ≥ \$2,500 <input type="checkbox"/> Multiple sources are available <input type="checkbox"/> Not an Emergency service	<p>One of the following must apply</p> <input type="checkbox"/> OEM, custom item <input type="checkbox"/> Only one source available <input type="checkbox"/> Competition is inadequate after public solicitation <input type="checkbox"/> Public emergency <input type="checkbox"/> Co-op Purchase
	<p>Method 1: Informal Quotes Note: The use of informal, advertised sealed bids for goods or non- professional/technical services between \$2,500-\$50,000 and Require Director of Purchasing Approval. All five of the following must apply:</p> <input type="checkbox"/> Complete an adequate specifications or purchase description <input type="checkbox"/> Three or more responsible bidders <input type="checkbox"/> Selection can be made on basis of price <input type="checkbox"/> Procurement suitable for firm, fixed price <input type="checkbox"/> No undocumented discussion is needed with bidders after receipt of offers	<p>Note: An approved Authorization for Sole Source Procurement must be attached</p>
	<p>Method 2: Quotes or Sealed Bids Note: The use of formal, advertised sealed bids for goods or nonprofessional technical services over \$50,000 and Require City Council approval. All five of the following must apply:</p> <input type="checkbox"/> Complete an adequate specifications or purchase description <input type="checkbox"/> Three or more responsible bidders <input type="checkbox"/> Selection can be made on basis of price <input type="checkbox"/> Procurement suitable for firm, fixed price <input type="checkbox"/> No undocumented discussion is needed with bidders after receipt of offers	
	<p>Method 3: Competitive Proposals Note: The use of formal, advertised sealed proposals for goods - nonprofessional technical services over \$50,000 and require City Council Approval. All five of the following must apply:</p> <input type="checkbox"/> Complete specifications are not feasible <input type="checkbox"/> Proposer input is needed for specifications <input type="checkbox"/> Three or more proposers are willing to compete <input type="checkbox"/> Discussion is needed with proposers after receipt of proposals and prior to award fixed price can be set after discussions	

The Purchasing and City Departments review the information and sign below when complete.

Final Administrative File Review

City _____

Date _____

Purchasing _____

Date _____

**City of Amarillo – City
Goods Procurement Written History
FTA-Funded Procurement**

Bid Number	PO Number	PO Amount	Grant Number	Awarded Vendor
<i>Purchasing will supply</i>	<i>Purchasing will supply</i>	<i>Purchasing will supply</i>	<i>City will supply</i>	<i>Purchasing will select</i>

Rationale for Procurement Method

Competitive Bid Process *(if you received 3 or more bids, check this box)*

Sole Source *(if you received 1 bid, complete the Sole Source forms 3 a or b, 4a - then b or c or e or f)*

Reasons for selecting the Contract Type

Low Bid *(if the bid was awarded based on low bid, check this box)*

Fixed Price *(if the bid was awarded based on a fixed price, check this box)*

Reasons for Contractor Selection or Rejection

Low Bid Meeting Specification *(if the contractor was selected based on low bid, check this box)*

Best Evaluated Respondent *(if the contractor was selected based on evaluation criteria, check this box)*

Written Responsibility Determination for the Successful Vendor

See the Bid Evaluation and Recommendation Form *(document why the vendor was selected for the project)*

Justification for the contract cost or price

See the Bid Evaluation and Recommendation Form *(document the price that was bid, % increase in bid price and other factors that affected the price.)*

The Purchasing and City Departments review the information and sign below when complete.

Final Administrative File Review

_____ City

_____ Date

_____ Purchasing

_____ Date

INDEPENDENT COST ESTIMATE (ICE) FORM

Per FTA Circular 4220.1F, Chapter VI, paragraph 6, the Common Rule requires the subrecipient to perform a *Price or Cost Analysis* in connection with every *Small Purchase or Competitive Proposal*. The most common way to make this determination is to compare offers to your *Independent Cost Estimate (ICE)*. An ICE serves as your benchmark for evaluating the reasonableness of the vendor’s proposed costs or prices and can range from a simple budgetary estimate to a complex estimate.

STEP 1: PROJECT DETAIL

AGENCY: [Click here to enter text.](#)
 ITEM BEING PROCURED: [Click here to enter text.](#)
 PREPARED BY: [Click here to enter text.](#)
 DATE ICE COMPLETED: [Click here to enter text.](#)

- Determine the Method of Procurement for the item being procured:

Procurement Type: <input type="checkbox"/> Purchase of Service <input type="checkbox"/> Construction <input type="checkbox"/> Facility Repair/Rehabilitation <input type="checkbox"/> Rolling Stock <input type="checkbox"/> Rolling Stock (rehab) <input type="checkbox"/> Equipment <input type="checkbox"/> Professional Services <input type="checkbox"/> Operations & Management <input type="checkbox"/> Materials & Supplies <input type="checkbox"/> Architecture <input type="checkbox"/> Engineering <input type="checkbox"/> Architecture & Engineering <input type="checkbox"/> Other: Click here to enter text.	Procurement Threshold <input type="checkbox"/> Micro Purchase <\$3500 <input type="checkbox"/> Small Purchase \$3500-\$150,000 <input type="checkbox"/> Competitive Proposals >\$150,000 <hr/> Procurement Method: <input type="checkbox"/> 3 Price or Rate Quotes <input type="checkbox"/> Competitive Proposals <input type="checkbox"/> Request for Proposals (RFP) <input type="checkbox"/> Request for Qualifications (RFQ) <input type="checkbox"/> Invitations for Bid (IFB) <input type="checkbox"/> Texas SmartBuy <input type="checkbox"/> Piggyback <input type="checkbox"/> Sole Source <input type="checkbox"/> Other: Click here to enter text.	Contract Type <input type="checkbox"/> Time & Material Contract <input type="checkbox"/> Labor Contract <input type="checkbox"/> Capital Asset <input type="checkbox"/> Other: Click here to enter text. <hr/> Project Funding Source: <input type="checkbox"/> State Funding <input type="checkbox"/> TxDOT Project#: Click here to enter text. <input type="checkbox"/> Federal Funds <input type="checkbox"/> FTA Project#: Click here to enter text. <input type="checkbox"/> Combination State and Federal Funds <input type="checkbox"/> Other: Click here to enter text.
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STEP 2: COST ESTIMATE DETAILS

The ICE is your independent estimate of what you would expect to pay for a product based on a reliable source.

- Determine the method of ICE that best fits your procurement requirements:
 - Publicly published price lists
 - Recent purchase invoiced prices
 - Market/Catalog prices, SmartBuy or Outreach Market Survey
 - Other: [Click here to enter text.](#)
- Documenting your ICE. Complete the following table using information gathered such as historical payments, SmartBuy, industry standards, market surveys, cost estimates from suppliers or manufacturers etc.

Vendor	Item to be procured	Unit Cost (\$/ea)	Notes
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

(Report Units **OR** Budget Amount)

# Of Units: Click here to enter text.	Estimated Budget: (Lump sum method)
Total Cost: Click here to enter text.	\$: Click here to enter text.

STEP 3: SUBMISSION

Presented with this ICE is the:

- Written Procurement History
 - Rationale the subrecipient used for the method of procurement
 - The rationale the subrecipient used for the selection of contract type
 - The reasons the vendor was selected
 - The methodology used to determine the contract price, including a cost justification
 - Price or Cost analysis

- Other Supporting Documentation: Click here to enter text.

DETERMINATION OF PRICE – COST ANALYSIS FORM

Per FTA Circular 4220.1F, Chapter VI, the Common Grant Rules require the subrecipient to perform a *Price or Cost Analysis* in connection with every applicable procurement.

STEP 1: COST DETERMINATION

AGENCY: [Click here to enter text.](#)

ITEM BEING PROCURED: [Click here to enter text.](#)

1. Can the item being procured be evaluated against prices being offered by other vendors or the general public for the same or similar items?
 - If Yes, PROCEED to STEP 2 – PRICE ANALYSIS
 - If No, PROCEED to STEP 3 – COST ANALYSIS

STEP 2: PRICE ANALYSIS

A price analysis is needed to determine if the bids received are fair and reasonable. The most common way to make this determination is to compare the offers to your completed Independent Cost Estimate (ICE). You may need to conduct additional analysis if your ICE is not consistent with the offers received.

2. Fill in the following Table; compare the offers from your Independent Cost Estimate (ICE) with the bids reviewed and/or received:

INDEPENDENT COST ESTIMATE NAME Click here to enter text.	VENDOR A NAME Click here to enter text.	VENDOR B NAME Click here to enter text.	VENDOR C NAME Click here to enter text.	VENDOR D NAME Click here to enter text.
PRICE Click here to enter text.	OFFERED PRICE Click here to enter text.	OFFERED PRICE Click here to enter text.	OFFERED PRICE Click here to enter text.	OFFERED PRICE Click here to enter text.

(Attach additional sheets if more than four VENDORS submitted prices)

3. Are the bids fair and reasonable? Yes No

4. If you cannot use your ICE to determine if the prices are fair and reasonable, please explain how you determined the above Vendor’s price were fair and reasonable. N/A
[Click here to enter text.](#)

5. Please indicate the supporting documentation retained for your files and made available to TxDOT upon request. Once complete, **PROCEED TO “STEP 4: PROJECT SELECTION”**.
 - Copies of rate schedules set by the applicable law or regulation.
 - Suppliers’ catalogs, internet pages, materials, website screenshots etc.
 - Specifications and costs from previous purchases
 - Internal engineering or technical specifications
 - Other: [Click here to enter text.](#)

STEP 3: COST ANALYSIS

A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost; e.g., under professional consulting and architectural and engineering services contracts.

Attached is a sample layout for the proposed costs. These costs are broken out into direct labor, overhead, facilities cost of capital, direct costs, fixed fee, and conclude with a total proposed cost. You should request the selected offeror to complete the attached form.

Direct Labor:	Indicate each labor classification, the hours for that classification, the related hourly rate for that classification and the dollar total for that classification. At the bottom of the Direct Labor portion of the sheet, indicate the total hours and dollars for direct labor.
Overhead:	Indicate the overhead rate being applied against direct labor. At the right, indicate the total overhead in dollars that results from the multiplication of the rate times the direct labor cost shown on this page.
Facilities Cost of Capital:	Indicate the FCC rate being applied against direct labor. At the right, indicate the total FCC in dollars that results from the multiplication of the rate times the direct labor cost shown on this page.
Direct Expenses:	List the direct expenses with a brief description and purchase price for the item. Indicate the total of these direct expenses at the bottom right of this portion of the sheet.
Fixed Fee:	Indicate the fixed fee percentage for this project. This fee is to be applied against direct labor and overhead only, not against direct expenses or FCC. MDOT policy restricts the amount of profit in consultant contracts to no more than 11 percent. At the right, indicate the total of this calculation.
Total:	At the bottom of the page, indicate the sum of the direct labor, overhead, FCC, direct expenses and fixed fee as calculated on this page.

Supporting Documentation

The Cost Analysis Worksheet should be completed using the following tools:

- Independent Cost Estimate: Compare cost of bids or proposals with your independent cost estimate.
- Published Prices: Competitors, catalogs, websites, advertisements, government price index etc.
- A Technical Evaluation: To assess quantitative and qualitative factors that influences the offered price.

Address such things as:

- a. Estimate of labor hours
 - b. Reasonableness of proposed material type, quantity, necessity
 - c. The need for acquiring equipment and which equipment should be considered as general purpose or unique to the performance of a particular contract.
 - d. The possibility and availability of grantee-furnished property
 - e. Number, location, and need for any grantee-funded trips by contractor personnel.
 - f. A summary statement as to whether labor, material, travel, and other cost elements are reasonable along with the evaluator's rationale.
- Accounting Records: Accounting records can tell you the cost of a job but are of limited value in determining reasonableness. Technical skills and judgments are required to determine reasonableness and necessity of those costs.
 - Auditor Pricing Support: This provides verification of proposed costs and an examination of the Vendor estimates; for example, certain categories of materials, salaries of contractor personnel, or the actual cost elements may have contributed to an overhead rate.

COST ANALYSIS WORKSHEET

(Add additional rows and other information as needed)

6. Complete the following Worksheet when a Price Analysis is unable to be completed. Fill in the following Table; compare the offers from your Independent Cost Estimate (ICE) with the bids reviewed and/or received. NOTE: the spreadsheet may be modified to meet your “cost effectiveness” expectations.

PROJECT DESCRIPTION: Click here to enter text.
INDEPENDENT COST ESTIMATE AMOUNT: Click here to enter text.

DIRECT LABOR

CLASSIFICATION	PERSONAL HOURS	x	HOURLY RATE	=	LABOR COSTS
Click here to enter text.	Click here to enter text.	x	Click here to enter text.	=	Click here to enter text.
Click here to enter text.	Click here to enter text.	x	Click here to enter text.	=	Click here to enter text.
TOTAL HOURS					Click here to enter text.
TOTAL LABOR COSTS					Click here to enter text.

OVERHEAD

TOTAL LABOR	x	PERCENTAGE (Enter as a percent)	=	TOTAL OVERHEAD
Click here to enter text.	x	Click here to enter text.	=	Click here to enter text.

FACILITIES COST OF CAPITAL (FCC)

TOTAL LABOR	x	PERCENTAGE (Enter as a percent)	=	TOTAL FCC
Click here to enter text.	x	Click here to enter text.	=	Click here to enter text.

DIRECT EXPENSES

ITEM	TOTAL DIRECT COSTS
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
TOTAL DIRECT EXPENSES	Click here to enter text.

FIXED FEE

TOTAL LABOR	+	TOTAL OVERHEAD	x	PERCENTAGE (Enter as a percent)	TOTAL FIXED FEE
Click here to enter text.	+	Click here to enter text.	x	Click here to enter text.	Click here to enter text.
GRAND TOTAL					Click here to enter text.

Provide a summary of your cost analysis including the tools utilized and the basis on which you determine the cost is fair and reasonable: Click here to enter text.

Negotiations – Required for A&E procurements and may be appropriate for other RFP procurements. For RFP Procurements, were negotiations conducted with the selected VENDOR/offeror? Yes <input type="checkbox"/> No <input type="checkbox"/>
For all A&E and other RFP procurements that conducted negotiations, describe the negotiations that occurred: Click here to enter text.

STEP 4: PROJECT SELECTION

This section elaborates and documents the evaluation procedure of bids/offers submitted by Vendors. Evaluation procedures carried out by subrecipient is essentially competitive and includes comparison of bids/offers submitted for each item to be procured, considering reasonableness, quality and feasibility of the project that must be met. The selection should be based on the following principles:

- Expert assessment** – Evaluators should possess relevant knowledge and expertise in order to evaluate bids/offers.
- Transparency** – All decisions must be based on clearly described and publicly available rules, procedures and evaluation criteria.
- Impartiality** – Project bids/offers are evaluated fairly and based on their quality.
- Consistency** – Evaluation procedure should be consistent, adjusted to characteristics of the item being procured and in proportion with the value of the bids/offers.
- Confidentiality** – All persons and organizations involved in the evaluation procedure must respect the confidentiality of all information listed in bids/offers, including intellectual property, and all other documents.
- Integrity and Ethics** – Integrity and ethics and are the highest principles in the entire process of the evaluation and their preservation is the responsibility of all persons involved in the evaluation.

7. Name of the winning Vendor: [Click here to enter text.](#) Offered Price: [Click here to enter text.](#)

8. What method did you use to evaluate the bids/offers?

- Cost and Need
- Lowest Price
- Internal Scoring Model
- Peer Evaluation
- Sole Source
- Other: [Click here to enter text.](#)

STEP 5: SIGNATURE

(Please print this form, sign and send to your TxDOT PTC)		
SIGNATURE Click here to enter text.	TITLE Click here to enter text.	DATE Click here to enter text.

12D) COA Standards of Conduct

Federal Policy:

The Common Grant Rules require each grantee to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

- a. Personal Conflicts of Interest. As provided in the Common Grant Rules and the Federal City Administration (FTA) Master Agreement, no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.
- b. Gifts. The COA's officers, employees, agents or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements.
- c. Violations. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the COA's officers, employees, agents, board members, or by contractors or subrecipients or their agents.

12E) Contract Administration System

Federal Policy:

The COA shall maintain contract administration systems that ensure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/ firms will be a factor in subsequent contract negotiations and award. Remedial action by the COA through legal processes shall be considered in instances of identified significant nonperformance.

12F) Written Protest Procedures

Federal Policy:

The Common Grant Rules charge the COA with the initial responsibility to resolve protests of third-party contract awards.

FTA requires the COA to notify FTA when it receives a third-party contract protest and to keep FTA informed about the status of the protest. The grantee is expected to provide the following information to the FTA –

1. Subjects. A list of protests involving third party contracts and potential third-party contracts that:
 - a. Have a value exceeding \$100,000, or
 - b. Involve a controversial matter, irrespective of amount, or
 - c. Involve a highly publicized matter, irrespective of amount.
2. Details. The following information about each protest:
 - a. A brief description of the protest,
 - b. The basis of disagreement, and
 - c. If open, how far the protest has proceeded, or
 - d. If resolved, the agreement or decision reached, and
 - e. Whether an appeal has been taken or is likely to be taken.
3. When and Where. The recipient should provide this information:
 - a. In its next quarterly Milestone Progress Report, and
 - b. At its next Project Management Oversight review, if any.Small recipients may report less frequently if no protests are outstanding.
4. FTA Officials to Notify. When a recipient denies a bid protest, and especially if an appeal to FTA is likely to occur, FTA expects the recipient to inform the FTA Regional Administrator for the region administering a regional project, or the FTA Associate Administrator for the program office administering a headquarters project directly. FTA also encourages the recipient to keep its FTA project manager informed about protests with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

Access to Information. FTA expects the recipient to disclose information about any third-party procurement protest to FTA upon request. FTA reserves the right to require the recipient to provide copies of a protest or all protests, and any or all related supporting documents as FTA may determine necessary.

FTA's Role and Responsibilities. FTA has developed an appeals process for reviewing protests of a recipient's procurement decisions.

Requirements for the Protester. The protester must:

- Qualify as an "Interested Party." Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third-party contract at issue.

- Subcontractors. A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
- Consortia/Joint Ventures/Partnerships/Teams. An established consortium, joint venture, partnership, or team that is an actual bidder or offeror and is acting in its entirety, would qualify as an “interested party” because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
- Associations or Organizations. An association or organization that does not perform contracts does not qualify as an “interested party,” because it does not have a direct economic interest in the results of the procurement.
- Exhaust Administrative Remedies. The protester must exhaust its administrative remedies by pursuing the recipient’s protest procedures to completion before appealing the recipient’s decision to FTA.
- Appeal Within Five Days. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the recipient’s final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient’s failure to have or failure to comply with its protest procedures or failure to review the protest.

Extent of FTA Review. As provided in the Common Grant Rule for governmental recipients, FTA will limit its review of third-party contract protests as follows:

- The Recipient’s Procedural Failures. FTA will consider a protest if the recipient:
 - Does not have protest procedures, or
 - Has not complied with its protest procedures, or
 - Has not reviewed the protest when presented an opportunity to do so.
- Violations of Federal Law or Regulations. FTA will not consider every appeal filed by a protestor of an FTA recipient’s protest decision merely because a Federal

law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violations of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.

- Violations of State or Local Law or Regulations. FTA will refer violations of State or local law to the State or local authority having proper jurisdiction.

FTA Determinations to Decline Protest Reviews. FTA's determination to decline jurisdiction over a protest does not mean that FTA approves of or agrees with the recipient's decision or that FTA has determined the contract is eligible for Federal participation. FTA's determination means only that FTA does not consider the issues presented to be sufficiently important to FTA's overall program that FTA considers a review to be required.

Any supplier of materials or services that participates in the COA's bid procedures has the right to protest. The COA has an "open door policy" for all suppliers who wish to protest. Protests may concern, but are not limited to, topics such as unfair treatment, restrictive specifications and award of bids, deliveries or payments. Protests should be made directly to the Director of Purchasing and will be accepted in writing. The Director of Purchasing will require the protest to be submitted in writing prior to taking any action. The Director of Purchasing will then investigate all facts concerning the protest. The fact-finding process, in most cases, will involve the Division Director and Department Head who initially requested the material or service.

The Director of Purchasing will then respond to the protesting party with the findings and decision. If the Director of Purchasing's decision is not satisfactory to the Protesting party, the protesting party can then contact the City Manager. This request must be in writing. The City Manager will review the protest and confer with the Director of Purchasing and the appropriate Division Director involved. The City manager will then render his decision to the protesting party.

If the City Manager's decision is not satisfactory to the protesting party, the protesting party can then contact the Mayor or any member of the Amarillo City Council. This request must be in writing. The City Council will then review the protest and confer with the City manager before making their decision on the protest. The decision rendered by the City Council will be final.

12G) Prequalification System

Federal Policy:

Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether it satisfies the recipient's standards. The Common Grant Rule for governmental recipients permits a recipient to prequalify people, firms, and property for procurement purposes if:

1. Lists. The recipient ensures that all prequalification lists it uses are current.
2. Sources. The recipient ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.
3. 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. Prequalification should not be confused with reviews of technical qualifications-that are an essential process in two-step procurements and qualifications-based procurements, as discussed further 4220.1F.

12H) Ensuring Most Efficient and Economic Purchase

Federal Policy:

The FTA requires a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. The COA will consider reassigning unneeded contract authority to another entity that would like to acquire the property or services due to a change in the COAs need for the property or service.

Exceptions: These limits on assignments, however, do not preclude: (1) Joint Procurements. It may be economically advantageous for a recipient to enter a joint procurement with others that have similar needs. The recipient responsible for undertaking the joint procurement may, upon contract award, assign to the other participants responsibilities for administering those parts of the contract affecting their property or services. Participation in a joint procurement, however, does not relieve any participating recipient from the requirements and responsibilities it would have if it were procuring the property or services itself, and does not relinquish responsibility for the actions of other participants merely because the primary administrative responsibility for a particular action resides in an entity other than in itself.

Smaller Procurements: In other circumstances, breaking out procurements may provide greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms, and women’s business enterprises to participate. As stated in paragraph 1.b(2) in 4220.1F, the FTA expects the recipient to ensure that it contracts only for its current and reasonably expected needs. Absent efforts to foster greater opportunities for DBE, small and minority firms, and women’s business enterprises, the recipient should not split a larger procurement merely to gain the advantages of small purchase procedures available for federally assisted procurements.

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.

12I) COA Purchasing Policies and Procedures

Federal Policy:

The COA’s solicitations include a written, clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, the specifications will feature nonrestrictive language. The specifications will not contain features that unduly restrict competition.

A description may include a statement that relates to the “quality” of the material, product, or service to be procured and when necessary, the COA will describe minimum essential characteristics and standards to which the material, product or services must conform if it is to satisfy its intended use.

The COA may use Performance Specifications in some procurement situations. A Performance Specifications will include technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

When it is impractical or uneconomical to write a 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 important characteristics of the property or services sought.

The City Department must document the need for the property or service when the project is placed in the budget. The Deputy City Manager and City Manager will review and approve the request, and then the City Council reviews and approves the budget.

The COA will research lease versus purchase alternatives to achieve an economical and practical procurement when appropriate.

The COA will, to the extent practicable and economically feasible, accept products and services dimensioned in the metric system of measurement.

The COA will, to the extent practicable and economically feasible, select products and services that conserve natural resources, protect the environment, and are energy efficient.

12J) Independent Cost Estimates and Cost and Price Analysis

Federal Policies:

The City Department will perform a cost or price analysis in connection with every procurement action over \$3,500.00, including contract modifications. To facilitate this, the Department will develop an independent cost estimate and a cost or price analysis prior to receipt of bids or proposals. The word “independent” does not imply that it is performed by someone other than the COA. This could be the case, however, if the COA does not have the expertise for a large complex procurement – outside assistance will be obtained. This analysis will be made part of the procurement file for every procurement action.

The method and degree of analysis will be dependent on the facts surrounding the procurement situation.

A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.). A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a

commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

A price analysis is adequate when the product or service being procured can be evaluated against other commercially available items of similar products or services.

For contracts other than A&E contracts, if the third-party contractor or subcontractor does not have an approved Government indirect cost rate agreement, the contract's dollar value should determine how that rate is verified.

Contracts valued at \$5 million or less, FTA will accept the audit recommendations of the contractor's certified public accountant or the indirect cost information in the contractor's annual statement to their stockholders, shareholders or owners or examples of acceptance of their rates by other governmental agencies within the last six months.

Contracts exceeding \$5 million must have approval and verify the contractor's indirect cost rates from a Defense Contract Audit Agency or other Federal cognizant audit agency or accounting firm approved by the Federal Government to perform audits for the Federal Government.

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

If the COA 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 COA will use a price analysis small purchases \$2,500 to \$150,000. The person procuring the item will document a finding of fair and reasonable pricing and indicate why – such as, catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for utilities purchases), or a comparison with recent prices for similar goods and services.

12K) COA Purchasing Policies and Procedure

Independent Cost Estimate

There are two types of ICE's – Cost or Price Analysis. The purpose of an I.C.E. is to provide a clear basis for analysis of cost or price and provide essential procurement and financial planning information. FTA, through its' Circular guidance, requires the COA to develop an I.C.E. of project costs before receiving any project bids or proposals.

A Price Analysis is adequate when the product or service being procured can be evaluated against other commercially available items of similar products or services. When this is not the case a Cost Analysis is required.

A Cost Analysis is an estimate prepared by qualified engineering staff, other functional staff, and/or outside consultants who have subject matter expertise and first-hand knowledge of the products or services to be designed, purchased, and/or constructed.

The Project will not be approved by the Purchasing Department until the ICE – Price or Cost Analysis has been prepared.

Preparing A Cost Analysis

Select a method to prepare a cost analysis. Any technique of assembly that provides a reasonable estimation of the anticipated costs is acceptable. Thus, for construction projects, using the A&E's opinion of probable construction cost as an estimate would be acceptable. The steps that follow are one example of how to prepare a Cost Analysis.

Divide the project level of effort requirements into identifiable tasks, deliverables or other logical steps; e.g., prepare a scope of work with identifiable deliverables and a time frame to accomplish the work.

Estimate the labor classifications that will be required to perform each task or prepare each deliverable. If possible, list the categories of labor that will be required to complete each task or deliverable (e.g. clerical, engineer, architect, etc.).

Estimate the labor cost for each labor classification. For A&E contracts, use a direct labor cost (DLC) for each labor category. For professional/technical services contracts, use a built-up hourly labor rate. Select a way that best matches with the development of labor estimates. That is, if you use labor categories, then use the different average hourly rates for each labor category. If labor categories were not identified, then use an average rate for all the work. For A&E contracts, average rates will generally fall in

the \$25 to \$50 per hour range; for professional/technical services contracts, the average built-up hourly rates will generally fall in the \$75 to \$150 per hour range. Summarize to develop a total direct labor cost (TDLC) for A&E contracts or a total hourly labor cost (THLC) for professional/technical services contracts.

For A&E contracts, estimate the indirect (overhead) labor cost factor (ILCF) for the Consultant. Overhead rates can vary considerably, from as low as 0.5 to 3.5 and higher. Several factors enter this variable: the current economic status; how the firm generates its overhead rates, the type of work being performed. Using a value of 1.75 will provide a reasonable estimate for your project cost. It is not necessary to estimate the ILCF for professional/technical services contracts; that component is already included in the built-up hourly rate.

For both A&E and professional/technical services contracts, estimate other direct costs (ODC) to the project. Other direct costs are those costs to the project that are not direct labor costs from the Consultant. They can include such items as sub-consultant costs, long distance telephone calls, travel expenses, per diem expenses, printing, computer charges, equipment rentals, local travel, parking, etc. (NOTE: Domestic per diem rates may be found at: www.gsa.gov).

For A&E contracts, estimate the percent profit (P) to be earned by the Consultant for the project. In general, the profit can range from 10% to 15% of the cost of the Consultant's direct labor costs + indirect (overhead) labor costs only. It is not necessary to estimate the (P) for professional/technical services contracts, that component is already included in the built-up hourly rate.

For A&E contracts, calculate the total estimated project cost (TEPC) using the following:

$$\text{TEPC} = [(\text{TDLC}) (1 + \text{ILCF})] [(1 + \text{P})] + \text{ODC}$$

where: TEPC = total estimated project costs
 TDLC = total direct labor costs
 ILCF = indirect labor cost factor
 P = percent profit, expressed as a decimal
 ODC = other direct costs.

For professional/technical services contracts, calculate the total estimated project cost (TEPC) using the following:

$$\text{TEPC} = \text{THLC} + \text{ODC}$$

where: TEPC = total estimated project costs
 THLC = total hourly labor costs
 ODC = other direct costs.

Identify all methods used to arrive at the estimate.

Be certain you have dated and signed all forms related to the I.C.E. - Cost Analysis

Send the original forms to the Purchasing Department for placement in the project files and attach a copy to the project file in the City Department.

12L) Geographic Preferences

Federal Policy:

Geographic location may be a selection criterion in procurements for A&E services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

12M) Unreasonable Qualification Requirements

Federal Policy:

The Common Grant Rules prohibit 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 restrictive of competition include, but are not limited to, the following, all of which are identified in one or both Common Grant Rules:

- **Excessive Qualifications.** Imposing unreasonable business requirements for bidders or offerors. Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.
- **Improper Prequalification.** Using prequalification procedures that conflict with the prequalification standards described in subsection FTA C 4220.1F, VI, 1. c.
- **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.

- **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 this circular for construction. FTA discourages unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by disadvantaged business enterprises. Bond companies exercise their discretion and assure their profits primarily by declining to undertake excessive risks. Consequently, many bidders have limited “bonding capacity.” Unnecessary performance bonding requirements reduce a prospective bidder’s or offeror’s capability to bid or offer a proposal on bonded work. Small businesses with short histories may have difficulty obtaining bonds as may be specified.

Nevertheless, even though bonding can be expensive, FTA recognizes that a recipient might find bid, performance, or payment bonds to be desirable. Because bonding requirements can limit contractor participation, FTA expects the recipient’s bonding requirements to be reasonable and not unduly restrictive. FTA, however, will not challenge State or local bonding requirements as unreasonably restrictive of competition, even though they might exceed Federal requirements. Nevertheless, if the recipient’s bonding policies result in such “excessive bonding” that it would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for those procurements. Thus, if the recipient’s bonding policies far exceed those described in this subparagraph or are permissible under State or local law, the recipient should obtain FTA’s written concurrence to ensure the availability of Federal assistance for the project.

- **Brand Name Only.** If the City Department requires a “brand name” product in a specification, the Department will allow offers of “an equal” product, describing the important characteristics that the “equal” product must meet to be acceptable for award. However, a “brand name or equal” may be used if it is impractical or uneconomical to make a clear and accurate description of the technical requirements.

“Brand name or equal” descriptions may be used only when adequate specifications or detailed descriptions cannot be provided without performing and inspection and analysis in timely manner for the item or service needed. If a “brand name or equal” is used, the minimum requirements and most important physical and useful characteristics of the “brand name or equal” must be included in the acquisition document. All necessities that a proposer or bidder must do or submit will be clearly stated in the initial procurement documentation.

- **In-State or Local Geographic Restrictions.** Specifying in-State or local geographical preferences or evaluating bids or proposals considering in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers. Exceptions expressly mandated or encouraged by Federal law include the following:
- **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.
- **Licensing.** A State may enforce its licensing requirements, provided that those State requirements do not conflict with Federal law.
- **Major Disaster or Emergency Relief.** Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.
- **Organizational Conflicts of Interest.** Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules:
 - **Occurrence.** An organizational conflict of interest occurs when any of the following circumstances arise:
 - **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.
 - **Unequal Access to Information.** The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - **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.
 - **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.

- **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.
- **Arbitrary Action.** Taking any arbitrary action in the procurement process.

Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.

12N) Contract Term Limitation

Federal Policy:

The COA shall not enter into a multi-year contract to buy rolling stock with an option not exceeding five (5) years to buy additional rolling stock or replacement parts, 49 U.S.C. Section 5325(e)(1). The COA may not exercise that option later than five (5) years after the date of its original contract. All other types of contracts (supply, service, revenue and construction, etcetera) should be based on sound business judgment. The COA is expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract is awarded, an extension of the contract term length that results in a scope change will require a sole source justification.

12O) Written Procurement Procedures

Federal Policy:

The City Department will produce written solicitations that adhere to the following standards:

- A clear and accurate description of the technical requirements for the material, product, or service to be procured.
- The description will include statements that describe the nature of the material, product, or service to be procured and when necessary, describe minimum and maximum essential characteristics and standards to which the property or services must conform if it is to satisfy its intended use.

- A description of the technical requirements in terms of “functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards”.
- **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.

12P) Solicitation Prequalification Criteria

Federal Policy:

The COA may prequalify people, firms, and property for procurement purposes if:

- The COA ensures that all prequalification lists it uses are current.
- The COA ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.
- The COA permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). The COA is not required to hold a solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation.

The COA may not expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period. Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step procurements and qualifications-based procurements.

12Q) Award to Responsible Contractors

Federal Policy:

FTA assisted contract awards must be made only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by the COA after receiving bids or proposals and before making contract award.

FTA expects the prospective contractor to demonstrate affirmatively to the COA that it qualifies as “responsible” under the standards of 49 U.S.C. Section 5325, and that its proposed subcontractors also qualify as “responsible.”

The COA is required to designate a prospective contractor as “responsible” as required by 49 U.S.C. Section 5325. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor must also satisfy the following criteria described below.

- Has a satisfactory record of integrity and business ethics
- Is neither debarred nor suspended from Federal programs under DOT regulations
- If the contractor is working as a DBE, the contractor must follow the FTA’s Disadvantaged Business Enterprise program requirements
- Follows the public policies of the Federal Government
- Has the necessary organization, experience, accounting, operational controls, and technical skills, or the ability to obtain them
- Follows applicable licensing, tax laws and regulations
- Has, or can obtain, enough financial resources to perform the contract
- Has, or can obtain, the necessary production, construction, technical equipment and facilities,
- Can comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments
- Can provide a satisfactory current performance record and satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity
- This record must include key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance
- Experience in carrying out similar work with attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation
- A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be no responsible, unless the COA determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply enough tenacity, perseverance, and effort to perform acceptably is strong evidence of no responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects the recipient to consider the number of the bidder or offeror’s contracts involved and the extent of deficient performance in each contract when making this determination.

12R) Sound and Complete Agreement

Federal Policy:

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

12S) No Splitting (Micro-Purchase)

Federal Policy:

The City Department may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.

12T) Fair and Reasonable Price Determination (Micro-Purchase)

Federal Policy:

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.

12U) Micro-Purchase Davis Bacon

Federal Policy:

Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

12V) Price Quotation (Small Purchase)

Federal Policy:

When appropriate, small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, \$2,500) but less than the Federal simplified acquisition threshold at 41 U.S.C. Section 403(11) (currently \$150,000). These purchases are also exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of \$150,000 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.

12W) Clear, Accurate and Complete Specifications

Federal Policy:

The invitation for bids, including any specifications and pertinent attachments, must describe the property, product or service sought in enough detail that a prospective bidder will be able to submit a proper bid.

12X) Adequate Competition – Two or More Competitors

Federal Policy:

The City Department must seek bids from two or more responsible bidders who are willing and able to compete effectively for the business and proposals must be solicited from an adequate number of qualified sources.

12Y) Firm Fixed Price (Sealed Bid)

Federal Policy:

The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.

The Common Grant Rule states a preference for the sealed bid procurement method for acquiring property, construction, and other services. Procurement using sealed bids is appropriate if:

- A complete, adequate, precise, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement generally lends itself to a firm fixed price contract.

12Z) Selection on Price (Sealed Bid)

Federal Policy:

The successful bidder can be selected based on 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, the contractor selection may not be determined based on other factors whose costs cannot be measured at the time of award.

12AA) Discussions Unnecessary (Sealed Bid)

Federal Policy:

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. A pre-bid conference with prospective bidders before bids are received can be useful.

City of Amarillo Policy allows documented discussion with bidders after bids open.

12AB) Advertised/Publicized (Sealed Bid)

Federal Policy:

The City of Amarillo will publicly advertise the invitation for bid in the Amarillo Globe News, Amarillo.gov, plan rooms, trade magazines and journals.

12AC) Adequate Number of Sources Solicited (Sealed Bid)

Federal Policy:

The City of Amarillo seeks out known suppliers from the following sources Internet, Telephone Book, and the City of Amarillo vendor database. Trade Journals, and any other means of locating potential bidders. Vendors interested in doing business with the City of Amarillo are encouraged to register.

12AD) Sufficient Bid Time (Sealed Bid)

Federal Policy:

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

12AE) Bid Opening (Sealed Bid)

Federal Policy:

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

12AF) Responsiveness (Sealed Bid)

Federal Policy:

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.

12AG) Lowest Price (Sealed Bid)

Federal Policy:

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.

12AH) Rejecting Bids (Sealed Bid)

Federal Policy:

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

12AI) Evaluation (RFP)

Federal Policy:

All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

12AJ) Price and Other Factors (RFP)

Federal Policy:

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

12AK) Sole Source if Another Award is Infeasible

Federal Policy:

The COA may use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

- When the COA requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the COA may make a sole source award.
- When the COA requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the COA has made a sole source award that must be justified.

FTA acknowledges competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.

12AL) Cost Analysis Required (Sole Source)

Federal Policy:

The COA must obtain a cost analysis when a price analysis will not provide enough information to determine the reasonableness of the contract cost. The COA 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 COA 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 COA, 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.

12AM) Evaluation of Options

Federal Policy:

The COA's contracts may include options to ensure the future availability of property or services, so long as the COA is able to justify the need. An option is a unilateral right in a contract by which, for a specified time, the COA may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

When awarding a contract that will include options, the following standards apply:

The COA must 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.

The COA need not evaluate bids or offers for any option quantities when the COA determines that evaluation would not be in its best interest.

The COA may use existing contract rights held by another entity under the following conditions:

The terms and conditions of the option the COA seeks to exercise are substantially like the terms and conditions of the option as stated in the original contract at the time it was awarded.

The COA may exercise an option after determining that the option price is better than prices available in the market, or the option is more advantageous when the COA plans to use the option.

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.

Exercising an option after the COA 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.

12AN) Cost or Price Analysis

Federal Policy:

The Common Grant Rule requires the recipient to perform a cost or price analysis in connection with every procurement action over \$2,500, 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.

- **Price Analysis.** For most goods and services purchase by COA, a Price Analysis will be enough. A price analysis is adequate when the product or service being procured can be evaluated against other commercially available items of similar products or services sold in substantial quantities to the general public or based on prices set by law or regulation.
- **Cost Analysis.** A cost analysis is required when a price analysis will not provide enough information to determine the reasonableness of the contract cost. Examples of a cost analysis include a procurement for professional services where no competing price proposals are submitted as in a procurement for A&E service where only one cost proposal is solicited from the highest-ranking firm or a sole-source procurement for other types of services. The City Department 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 City Department does not need to 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.

Change Order

The Common Grant Rule requires the City Department to perform a cost analysis in connection with every contract modification or change order.

The recipient is responsible for issuing, evaluating and making necessary decisions involving any change to its third-party contracts, and any change orders, or modifications it may issue. In general, FTA expects each recipient to comply with the following procedures:

- **Approval Requirements.** FTA expects the recipient to have a cost analysis supporting each change order it may issue. FTA also expects the recipient's authorized official to approve any proposed change order before it is issued.
- **Cost Restrictions.** To be eligible for FTA assistance under the recipient's grant or cooperative agreement, the cost of the change order must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

FTA's Role and Responsibilities. FTA does not participate in the recipient's decisions involving change orders, constructive changes, or modifications, but reserves the right to review the recipient's supporting documentation as necessary to determine the extent of FTA assistance that may be used to support those costs. Federal cost principles contain many requirements about the allowability and allocability of costs.

Indirect Cost Rate

For contracts other than A&E contracts - if the third-party contractor or subcontractor does not have an approved Government indirect cost rate agreement, the contract's dollar value should determine how that rate is verified.

Contracts \$5 Million or Less - FTA will accept the audit recommendations of the contractor's certified public accountant, or indirect cost information in the contractor's annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other governmental agencies within the last six months.

If the contract exceeds \$5 million - then the Defense Contract Audit Agency, another Federal cognizant audit agency, or an accounting firm approved by the Federal

Government to perform audits for the Federal Government, must verify the contractor's rates.

Profit

FTA expects the COA to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all A&E projects in which the recipient performs or acquires a cost analysis. To establish a fair and reasonable profit, the COA 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.

12AO) Written Record of Procurement History

Federal Policy:

The City Department is required 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 City Department to maintain these records for three years after final payment is made and all other pending matters are closed. The COA must prepare, maintain, and distribute the following documents:

- The COA 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.
- The COA must state the reasons for selecting the contract type it used.
- The COA must state its reasons for contractor selection or rejection.
- The COA should include a written responsibility determination for the successful contractor
- The COA must evaluate and state its justification for the contract cost or price.

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.

12AP) Exercise of Options

Federal Policy:

The FTA permits the COA to use existing contract rights held by another recipient under the following conditions:

- The COA must ensure that the terms and conditions of the option it seeks to exercise are substantially like the terms and conditions of the option as stated in the original contract at the time it was awarded.
- The COA 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.

The following actions constitute sole source awards:

- The COA must limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others later.
- If the supplies or services were solicited, competed, and awarded using an indefinite-delivery-indefinite-quantity (IDIQ) contract, the solicitation and the contract award are expected to contain both a minimum and maximum quantity that represent the recipient's reasonably foreseeable needs.
- The COA may assign those contract rights to other public transportation 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. Some refer to this process as "piggybacking."

12AQ) Out of Scope Changes

Federal Policy:

When the COA requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the COA may make a sole source award. When the COA requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.

12AR) Advance Payments

Federal Policy:

Advance payments are payments made to a contractor before the contractor incurs contract costs. The COA 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:

- The COA 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.
- Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the COA can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. The COA that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.
- 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.
- 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 COA 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.

12AS) Progress Payments

Federal Policy:

Progress payments are payments for contract work that has not been completed. The COA may use FTA assistance to support progress payments provided the COA obtains adequate security for those payments and has enough written documentation to substantiate the work for which payment is requested.

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the COA'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 COA should always consider the costs associated with providing security (for example, the COA 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.

12AT) Time and Materials Contracts

Federal Policy:

The Common Grant Rule permits the use of time and material contracts only after determining that no other contract type is suitable and if the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

12AU) Cost Plus Percentage of Cost

Federal Policy:

The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and cost plus a percentage of construction cost methods of contracting.

12AV) Liquidated Damages Provisions

Federal Policy:

The COA may use liquidated damages if the COA 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 COA'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, 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 damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.

12AW) Piggybacking

Federal Policy:

In the event the COA finds that it has inadvertently acquired contract rights in excess of its needs, the COA 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. Some refer to this process as "piggybacking."

12AX) Qualifications Exclude Price [A&E]

Federal Policy:

Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award. Price is excluded as an evaluation factor. Negotiations are first conducted with only the most qualified offeror. 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.

The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expressly authorizes the use of FTA capital assistance to support design-build projects "after the COA complies with 49 U.S.C. Section 5325(d)(2).

The COA must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the COA to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

The construction costs of a design-build project are usually predominant so that the COA would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based Brooks Act procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.

In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural

engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the Brooks Act.

The COA may undertake its design-build procurement in a single step or use the One-Step Method.

The COA may also use for large design-build projects a two-step process as authorized for Federal Government use by 41 U.S.C. Section 253m.

The first step is a review of the prospective contractors' technical qualifications and technical approach to the project. The COA may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.

The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.

By using this two-step method, it will not be necessary for the COA to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

12AY) Serial Price Negotiations [A&E]

Federal Policy:

The recipient should use competitive procedure(s) appropriate for the acquisition undertaken. 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.

Architectural Engineering (A&E) Services and Other Services. 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 as described below.

Qualifications-Based Procurement Procedures. The following procedures apply to qualifications-based procurements:

- Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
- Price. Price is excluded as an evaluation factor.
- Most Qualified. Negotiations are first conducted with only the most qualified offeror.
- 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.

12AZ) Bid Guarantee [Construction over \$100,000]

Federal Policy:

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.

12BA) Performance Bond [Construction over \$100,000]

Federal Policy:

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.

12BB) Payment Bond [Construction over \$100,000]

Federal Policy:

The Common Grant Rules generally requires 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:

- **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million,
- **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
- **More Than \$5 Million.** Two and one half million dollars if the contract price is more than \$5 million.

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 C 4220.1F, IV, 2.h (1). 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 project should submit its policy and rationale to the Regional Administrator for the region administering the project.

12BC) Federal Clauses

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
No federal government obligations to third parties by use of disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>100,000 (for steel, iron, manufactured products)
Provisions for resolution of disputed, breaches, or either litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Contact Work Hours & Safety Standards Act		>100,000	>100,000	>\$100,000 (including ferry vessels)	
Bonding (not required of states)				>\$100,000 (including ferry vessels)	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	

CLAUSE	TYPES OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
City Employee Protective Arrangements		City operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		City operations funded with Section 5307, 5309, 5311 or 5316 funds			
Patent Rights	Research & development				
Rights in Data and Copyrights requirements	Research & development				
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
ADA Access	A&E	All	All	All	All
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states

OTHER REQUIRED ITEMS

REQUIREMENT	COMMENTS	FTA C 4220.1F References
Contract Administration System		Ch. III, §3
Record of Procurement History		Ch. III, §3. d (1)
Protest Procedures		Ch. VII, §1
Selection Procedures		Ch. III, §3d(1)(c)
Independent Cost Estimate		Ch. VI, §6
Cost/Price Analysis		Ch. VI, §6
Responsibility Determination		Ch. VI, §8. b
Justification for Noncompetitive Awards	If applicable	Ch. VI, §3. i(1)(b)
No excessive bonding requirements		Ch. VI, §2.h(1)(f)
No exclusionary specifications		Ch. VI, §2. a (4)
No geographic preferences	Except for A&E services	Ch. VI, §2. a(4)(g)
Evaluation of Options	If applicable	Ch. VI, §7. b
Exercise of Options		Ch. V, §7. a

REQUIRED CERTIFICATIONS, REPORTS, AND FORMS

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE
Bus Testing Certification and Report	Procurements of buses and modified mass-produced vans	§17.o(4)
TVM Certifications	Procurements of buses and modified mass-produced vans	§12.d(1)
Buy America Certification	Procurements of steel, iron or manufactured products > \$100,000	§16.a
Pre-Award Audit	Rolling stock procurements	§17.o(3)
Pro-Award Buy America Certification	Rolling stock procurements >\$100,000	§17.o(3)
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§17.o(3)
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	§17.o(3)
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	§17.o(3)
Excluded Parties Listing System search	Procurements > \$25,000	§3. b
Lobbying Certification	Procurements > \$100,000	§3. d (1)
Standard Form LLL and Quarterly Updates (when required)	Procurements > \$100,000 where contractor engages in lobbying activities	§3. d (1)

12BD) Wage and Hour Requirements - Veterans Hiring Preference

Federal Policy:

The Common Grant Rules direct the COA to include provisions in its third-party contracts requiring contractors to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.

The Common Grant Rules require these provisions for compliance with Sections 102 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 3702, and Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to No construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. Section 3701(b)(3)(A)(iii), increased the wage and hour thresholds of \$2,000 for construction work and \$2,500 for no construction work set forth in the Common Grant Rules to \$100,000. A federally assisted contract must exceed \$100,000 before these wage and hour requirements apply to that contract. The Fair Labor Standards Act, 29 U.S.C. Sections 201 et seq., applies to employees performing work involving commerce.

Appendix

4220.1F - Required Procurement Elements

No.	Element	Basic Requirement
1)	Written Standards of Conduct	FTA C 4220.1F, III, 1. a. b. c.
2)	Contract Administration System	FTA C 4220.1F, III, 3.
3)	Written Protest Procedures	FTA C 4220.1F, VII, 1. a. b.
4)	Prequalification System	FTA C 4220.1F, VI, 1. c.
5)	System for Ensuring Most Efficient and Economic Purchase	FTA C 4220.1F, IV, 1. b. c. e.
6)	Procurement Policies and Procedures	FTA C 4220.1F, III, 3.a..
7)	Independent Cost Estimate	FTA C 4220.1F, VI, 6.
8)	A&E Geographic Preference	FTA C 4220.1F, VI, 2. a. (4) (g)
9)	Unreasonable Qualification Requirements	FTA C 4220.1F, VI, 2. a. (4) (a)
10)	Unnecessary Experience and Excessive Bonding	FTA C 4220.1F, VI, 2. a. (4) (e); BPPM 8.2
11)	Organizational Conflict of Interest	FTA C 4220.1F, VI, 2. a. (4) (h)
12)	Arbitrary Action	FTA C 4220.1F, VI, 2. a. (4) (j)
12)	Brand Name Restrictions	FTA C 4220.1F, VI, 2. a. (3) (4) (f)
14)	Geographic Preferences	FTA C 4220.1F, VI, 2. a. (4) (g)
15)	Contract Term Limitation-Rolling Stock	FTA C 4220.1F, IV, 2. e. (10)
16)	Written Procurement Selection Procedures	FTA C 4220.1F, III, 3. a.; VI, 2. e.
17)	Solicitation Prequalification Criteria	FTA C 4220.1F, VI, 1.c. (1) (2) (3)
18)	Award to Responsible Contractors	FTA C 4220.1F, VI, 8. b.
19)	Sound and Complete Agreement	FTA C 4220.1F, IV, 2.b.(6) <u>2</u> ; IV, 2.b.(6) <u>4</u>

20)	No Splitting [Micro-purchase]	FTA C 4220.1F, VI, 3. a. (2) (b)
21)	Fair and Reasonable Price Determination [Micro-purchase]	FTA C 4220.1F, VI, 3. a. (2) (c)
22)	Micro-Purchase Davis Bacon	FTA C 4220.1F, VI, 3. a. (1)
23)	Price Quotations [Small Purchase]	FTA C 4220.1F, VI, 3. b. (2)
24)	Clear, Accurate, and Complete Specification	FTA C 4220.1F, III, 3. a. (1) (b) (d); VI, 2. a.; VI, 3. c. (2) (c)
25)	Adequate Competition - Two or More Competitors	FTA C 4220.1F, VI, 3. c. (b); VI, 3. d. (2) (c)
26)	Firm Fixed Price [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (1) (c)
27)	Selection on Price [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (1) (d)
28)	Discussions Unnecessary [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (1) (e)
29)	Advertised/Publicized	FTA C 4220.1F, VI, 3. c. (2) (a)
30)	Adequate Number of Sources Solicited	FTA C 4220.1F, VI, 3. c. (2) (b)
31)	Enough Bid Time [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (2) (d)
32)	Bid Opening [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (2) (e)
33)	Responsiveness [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (2) (f)
34)	Lowest Price [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (2) (d)
35)	Rejecting Bids [Sealed Bid]	FTA C 4220.1F, VI, 3. c. (2) (g)
36)	Evaluation [RFP]	FTA C 4220.1F, VI, 3. d. (2) (b) (d)
37)	Price and Other Factors [RFP]	FTA C 4220.1F, VI, 3. d. (2) (e)
38)	Sole Source if Another Award is Infeasible	FTA C 4220.1F, VI, 3. i. (1); VI, 3.i. (b); VI, 3.i.2 <u>b</u>
39)	Cost Analysis Required [Sole Source]	FTA C 4220.1F, VI, 6. a.
40)	Evaluation of Options	FTA C 4220.1F, IV, 1.d VI, 7.b; V, 7.a. (1) (c) 1
41)	Cost or Price Analysis	FTA C 4220.1F, VI, 6. a. (2); VI, 6. b.; VI, 6.a. (3)
42)	Written Record of Procurement History	FTA C 4220.1F, III, 3. d.
43)	Exercise of Options	FTA C 4220.1F, V, 7. a. (1) (a)(b)(c) 2
44)	Out of Scope Changes	FTA C 4220.1F, VI, 3.i. (1) (b)
45)	Advance Payments	FTA C 4220.1F, IV, 2. b. (5) (b) 1, 2; IV, 2.b.(5) (b) 2, b; IV, 2.b.(5) (b) 2 b
46)	Progress Payments	FTA C 4220.1F, IV, 2. b. (5) (c)
47)	Time and Materials Contracts	FTA C 4220.1F, VI, 2.c.(2)(b)
48)	Cost Plus Percentage of Cost	FTA C 4220.1F, VI, 2.c.(2)(a).
49)	Liquidated Damages Provisions	FTA C 4220.1F, IV, 2.b.(6)(b) 1
50)	Piggybacking	FTA C 4220.1F, V, 7. a. (2)
51)	Qualifications Exclude Price [A&E]	FTA C 4220.1F, VI, 3.f.(3); VI 3.f.(3)(b); VI, 3. h.
52)	Serial Price Negotiations [A&E]	FTA C 4220.1F, VI, 3.f.(3)
53)	Bid Guarantee [Construction over \$100,000]	FTA C 4220.1F, IV, 2.h.(1)(b)
54)	Performance Bond [Construction over \$100,000]	FTA C 4220.1F, IV, 2.h.(1)(b)
55)	Payment Bond [Construction over \$100,000]	FTA C 4220.1F, IV, 2.h.(1)(c); IV, 2.h.(1)(e)
56)	Clauses	FTA C 4220.1F, IV, 2.
57)	Veterans Hiring Preference	FTA C 4220.1F, IV, 2. c. (1)