

ST. LUCIE COUNTY
BOARD OF COUNTY COMMISSIONERS



PURCHASING POLICY MANUAL

EFFECTIVE: January 25, 2022

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SECTION 1

MANUAL OVERVIEW

- [1.1](#) Purpose
- [1.2](#) Scope
- [1.3](#) Distribution
- [1.4](#) Implementation
- [1.5](#) Revisions

SECTION 2

GENERAL PURCHASING OVERVIEW

- [2.1](#) Role of the Finance Department
- [2.2](#) Good Faith Policy
- [2.3](#) Conflict of Interest
- [2.4](#) Environmentally Preferred Purchasing
- [2.5](#) Vendor Reference Request

SECTION 3

CASH FUNDS

- [3.1](#) Petty Cash Policy
- [3.2](#) Petty Cash Purchase Authorization
- [3.3](#) Petty Cash Funds
- [3.4](#) Disallowance of Cash Purchases
- [3.5](#) Change Funds

SECTION 4

PURCHASING CARDS

- [4.1](#) Purpose
- [4.2](#) Cardholder Use of Purchasing Card
- [4.3](#) Purchasing Card Requirements
- [4.4](#) Prohibited Uses of Purchasing Cards
- [4.5](#) Failure to Abide by Purchasing Card Policies and Procedures
- [4.6](#) Sales and Use Taxes
- [4.7](#) Purchasing Card Disaster Plan
- [4.8](#) Special Purchases

SECTION 5

PURCHASING PROCESSES

- [5.1](#) Competitive Process Policy
- [5.2](#) Exempt Purchases
- [5.3](#) Local Preference
- [5.4](#) Public Entity Crimes
- [5.5](#) Piggybacking: Purchase of Goods, Equipment, and Contractual Services from other Governmental Bids

SECTION 6

AUTHORIZATION LIMITS

- [6.1](#) Signature Authority
- [6.2](#) Exceptions

SECTION 7

PURCHASES OF \$50,000 OR LESS – FORMAL AND INFORMAL QUOTES

- [7.1](#) Quotation Thresholds
- [7.2](#) Informal Quotations
- [7.3](#) Formal Quotations

SECTION 8

PURCHASES GREATER THAN \$50,000 – INVITATIONS TO BID

- [8.1](#) Bid Waiver
- [8.2](#) Invitations to Bid

SECTION 9

REQUEST FOR PROPOSALS

- [9.1](#) RFP Contents
- [9.2](#) RFP Award

<u>SECTION 10</u>	REQUEST FOR QUALIFICATIONS
<u>10.1</u>	RFQ Content
<u>10.2</u>	RFQ Award
<u>SECTION 11</u>	SPECIALTY CONSTRUCTION PROCUREMENTS
<u>11.1</u>	Prequalification and Shortlisting
<u>11.2</u>	Continuing Contracts for Construction Projects
<u>11.3</u>	Design-Build
<u>11.4</u>	Construction Management
<u>11.5</u>	Public – Private Partnerships
<u>SECTION 12</u>	RESOLUTION OF SOLICITATION AND PROPOSED AWARD PROTESTS
<u>12.1</u>	Right to Protest
<u>12.2</u>	Resolution of Protests
<u>12.3</u>	Stay of Procurement during Protests
<u>SECTION 13</u>	PROFESSIONAL AND OTHER SERVICES
<u>13.1</u>	Competitive Negotiations
<u>13.2</u>	Professional Services Definition
<u>13.3</u>	Authorization to Obtain Professional Services
<u>13.4</u>	CCNA Professional Services
<u>13.5</u>	Community Development Block Grant (CDBG) Professional Services Procurement Procedure
<u>13.6</u>	Other Services – Specialist, Vendor and Speaker Agreements
<u>SECTION 14</u>	MINORITY BUSINESS PARTICIPATION
<u>14.1</u>	Definitions
<u>14.2</u>	County Selections Procedures
<u>14.3</u>	Minority Business Enterprise (MBE) Directory
<u>SECTION 15</u>	VENDOR PERFORMANCE EVALUATIONS AND DEBARMENT
<u>15.1</u>	Vendor Evaluations
<u>15.2</u>	Debarment
<u>SECTION 16</u>	PROCUREMENT PROCEDURES FOR STATE OR FEDERALLY FUNDED GRANT PROGRAMS
<u>16.1</u>	Applications
<u>16.2</u>	Acceptance
<u>16.3</u>	Procurement
<u>SECTION 17</u>	CONTRACT PROCEDURE
<u>17.1</u>	Contract Requirements
<u>17.2</u>	Contract Preparation
<u>17.3</u>	Contract Amendments
<u>SECTION 18</u>	CONTINUING CONTRACTS AND WORK AUTHORIZATIONS
<u>18.1</u>	Continuing Contracts
<u>18.2</u>	Work Authorizations
<u>18.3</u>	Amendments to Work Authorizations
<u>SECTION 19</u>	CONSTRUCTION CONTRACTS
<u>19.1</u>	Construction Contracts and Amendments
<u>19.2</u>	Apprenticeship Program Requirements
<u>19.3</u>	Bonding and Insurance Requirements
<u>19.4</u>	Retainage for Construction Contracts
<u>19.5</u>	Close Out of Construction Contracts
<u>SECTION 20</u>	EMERGENCY PURCHASES
<u>20.1</u>	Emergency Purchase Policy
<u>20.2</u>	Definition of an Emergency
<u>20.3</u>	Emergency Purchase Authorization

[20.4](#) Emergency Purchase over Authorization Limit

[SECTION 21](#) (SECTION NOT USED)

[SECTION 22](#) MISCELLANEOUS OBLIGATIONS

[22.1](#) Miscellaneous Obligations

[SECTION 23](#) CAPITAL ASSETS

[23.1](#) County Owned Personal Property

[23.2](#) Acquisition of Capital Assets

[23.3](#) Disposition of Capital Assets

[23.4](#) Hardware/Software

[SECTION 24](#) FUNDRAISING AND SPONSORSHIP POLICY

ATTACHMENTS:

[ATTACHMENT A](#) PROCUREMENT POLICIES & PROCEDURES FOR CDBG PROGRAMS & PROJECTS

[ATTACHMENT B](#) FTA PURCHASING GUIDELINES

[ATTACHMENT C](#) PROCUREMENT REQUIREMENTS FOR PURCHASES WITH FEDERAL GRANTS

AMENDING RESOLUTIONS AND ORDINANCES SINCE 1991

1994: 94-34, 94-49, 94-66, 94-255

1997: 97-48, 97-131, 97-144, 97-178

1998: 98-25, 98-181

1999: 99-234

2001: 01-26, 01-102, 01-289, 01-300

2002: 02-8

2003: 03-253

2004: 04-66, 04-159, 04-189

2006: 06-183

2008: 08-032, 08-118, 08-122, 08-124, 08-191, 08-266

2009: 09-005, 09-352

2010: 10-067, 10-157

2014: 14-002

2015: 2015-8, 2015-194

2016: 2016-23

2018: 2018-23

2019: 19-171, 19-197, 19-203

2021: 21-320, 21-324

2022: 22-014

SECTION 1 - MANUAL OVERVIEW

1.1 PURPOSE

The purpose of this Purchasing Policy Manual (Manual) is to provide clear direction to all County employees regarding the purchasing policies of St. Lucie County, Florida. The adoption of this Manual and the approval of any subsequent revisions by the Board of County Commissioners (Board) shall authorize the policies contained herein for official use in County business.

1.2 SCOPE

The scope of this Manual includes all departments, offices and dependent taxing districts under the jurisdiction of the Board, as well as all purchasing transactions that are paid for directly from County funds under the control of the Board. The scope of this Manual shall not include payroll transactions relative to the Board.

1.3 DISTRIBUTION

This Manual and related procedures will be available to all County employees and the general public through the County's intranet and internet sites.

1.4 IMPLEMENTATION

- a. The County Administrator shall ensure that written procedures are maintained to implement and enforce the policies set forth in this Manual.
- b. The Finance Department, headed by the Finance Director, and under the authority of the Clerk to the Board, an independent Elected Officer, shall exercise dual authority over the County purchasing process for the purpose of implementing and enforcing these policies and related procedures on a countywide basis, as well as in the Finance Department for its role in the process.
- c. The County Administrator, in consultation with the Finance Director, is authorized to determine how to correct policy errors and violations when they occur. To the extent feasible, the error or violation should be corrected through implementation of the Manual policy.
- d. Violation of any of the policies in this Manual may be grounds for disciplinary action. In addition, a violation may result in the County's refusal to pay for any improperly ordered goods or services.
- e. As allowed by law, the Board shall have the authority, in specific cases determined to be exceptional, to waive or override the policies in this Manual and to direct a different handling of each such case.
- f. To the extent feasible, the Board expects purchases to be planned as part of the budget process.
- g. The Board recognizes that all purchases cannot be included in the budget or, when budgeted, the specific items and costs may not be known. However, employees shall not intentionally divide, underestimate or otherwise manipulate purchases to avoid the budget process, purchasing procedures and/or approval requirements.

1.5 REVISIONS

This Manual is to serve as a permanent and up-to-date guide to County purchasing policies. As changes are approved by the Board, the County Administrator or designee shall be responsible for updating the Manual and implementing appropriate procedures. The County Administrator is authorized to correct typographical or scrivener's errors to ensure the Board's policy intent is clear.

SECTION 2 - GENERAL PURCHASING OVERVIEW

2.1 ROLE OF THE FINANCE DEPARTMENT

The role of the Finance Department, as an agent of the Clerk to the Board and an independent Elected Officer, is to serve as the Accountant and Treasurer to the Board. The Finance Department shall exercise dual authority over the County purchasing process and, specifically, for the following:

- a. Pre-auditing all payment requisitions, prior to disbursement, to determine accuracy, legality, and propriety, and to determine that appropriate policies and procedures have been followed.
- b. Rejecting any payment requisition for a purchase transaction in which the policies and procedures outlined in this Manual have not been followed.
- c. Disbursing funds for purchase transactions that are legal and proper, and in compliance with all appropriate policies and procedures.
- d. Recording all disbursements in the County's accounting records.

2.2 GOOD FAITH POLICY

- a. A County employee acting in a private capacity shall not rent, lease, or sell any realty, goods, or services to the County. County Commissioners shall comply with Chapter 112, Part III, Florida Statutes and other applicable statutes and regulations related to conduct and disclosure. With regard to the receipt of any benefit or profit from any contract or purchase made by the County, the actions of the County Commissioners as well as any County employee having the authority to commit the expenditure of County funds through the issuance of a purchase order shall be governed by Chapter 112, Florida Statutes.
- b. No County employee shall solicit or accept anything of value to the employee including a gift, loan, reward, promise of future employment, favor, or service based on any understanding that the judgment of the employee would be influenced thereby.
- c. The County strives to maintain a strong and enduring relationship with vendors of proven ability. To accomplish this, purchasing activities will be conducted so that vendors will value County business and make an effort to meet our requirements on the basis of quality, service and price.
- d. The County will buy only from suppliers who have adequate financial strength, high ethical standards, and a record of adhering to specifications, maintaining shipping promises, and giving a full measure of service. New sources of supply shall be given due consideration as multiple sources of supply are necessary to ensure availability of materials.
- e. No purchase order or contract shall be knowingly issued when there is evidence of a conflict of interest. When a conflict may exist, but its existence is not clearly established, the County Administrator shall refer the matter to the County Attorney whose opinion shall be final in the absence of any specific action by the Board.

2.3 CONFLICT OF INTEREST

- a. All contracts between the County and any vendor or consultant shall contain a conflict of interest clause as approved by the County Attorney.
- b. Any professional consultant that contracts as the prime consultant with the County to perform a study as to the feasibility of any County capital project shall not be eligible to participate as the prime consultant in any future design work on that project that might become necessary as a result of the

consultant's advice. This policy shall be included in any request for proposals related to the feasibility of any County project. The Board may waive this policy by majority vote. For the purpose of this policy a feasibility study is an analysis that considers all of a capital project's relevant factors – including economic, technical, legal, and scheduling considerations – to ascertain the likelihood of completing the project successfully. A feasibility study does not include a project development and environmental (PD&E) study required by the state or federal government.

- c. In addition to the provisions of Section 2.3(a)(b), federal standards of conduct apply to all federally supported grant projects, including but not limited to:
 1. No elected official, employee, or agent of the County shall participate in selection or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent would be involved.
 2. Such a conflict would arise when the elected official, employee, or agent, any member of his or her immediate family, partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected or considered for award.
 3. The County's elected officials, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- d. Violations of the standards of conduct in this Manual may result in disciplinary action as set forth in Section 112.317, Florida Statutes, provided that such disciplinary action does not conflict with the jurisdiction of the State of Florida Commission on Ethics.

2.4 ENVIRONMENTALLY PREFERRED PURCHASING

- a. The County will seek to increase acquisition and utilization of environmentally preferred products and services, consistent with price, performance, availability, and safety considerations. Environmentally preferred purchases are products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.
- b. The County may consider paying a reasonable premium for environmentally preferred products and services.
- c. Environmentally preferred purchasing should be taken into account as early as possible in the planning and decision-making process. Environmentally preferred purchasing shall be considered in planning and design phases of new construction and renovation projects including energy conservation, green building technologies and Florida-friendly landscaping. The County will seek to increase the purchase and use of environmentally preferred office and cleaning supplies and electronic and computer equipment, including but not limited to the purchase or lease of duplex printers and copiers, consistent with price, performance, availability, and safety considerations.
- d. Any vendor contracting with the County is required to purchase products or materials with recycled content when those products or materials are available at reasonable prices within a reasonable period of time unless the products or materials fail to meet reasonable performance standards. If the decision was made not to use recycled products, the vendor shall provide the County with a written statement indicating the basis for the decision.

2.5 VENDOR REFERENCE REQUEST

From time to time, the County receives requests for references regarding vendors, contractors, and professional services providers with whom the County does business. In the event an employee receives a request for a reference, the employee should refer the request to the Department Director or Project Manager, for response.

SECTION 3 – CASH FUNDS

3.1 PETTY CASH POLICY

The administrative costs and staff time to purchase supplies and services of small monetary value through the usual purchasing procedures are often excessive in relation to the value of supplies and services received. In addition, there are vendors which do not accept purchasing cards. For these reasons, the Board has adopted a Petty Cash policy.

3.2 PETTY CASH PURCHASE AUTHORIZATION

Petty cash purchases are authorized for minor purchases as determined by the County Administrator or designee. The County Administrator or designee or the Finance Director shall have the authority to disallow any purchase not made in accordance with such policies and procedures.

3.3 PETTY CASH FUNDS

The establishment of a petty cash fund and the amount of such a fund for any County department, division or office must be authorized in writing by the County Administrator.

3.4 DISALLOWANCE OF PETTY CASH PURCHASES

Any petty cash purchase not made in accordance with County purchasing policies and procedures may not be paid or reimbursed by the County. The employee may be required to reimburse the County for such purchase.

3.5 CHANGE FUNDS

The County Administrator is authorized to establish change funds which are cash funds used to make change for customers paying fees, buying tickets, novelties, etc. Purchases shall not be made from change funds.

SECTION 4 - PURCHASING CARDS

4.1 PURPOSE

The County Administrator or designee shall determine who is issued a purchasing card and the limits of that card. Written procedures shall be established by the County Administrator to implement the following:

- a. Provide an efficient method of purchasing and paying for goods and services based on the user's card and per transaction limits.
- b. Ensure use of purchasing cards is cost-effective and takes advantage of available discounts.
- c. Reduce the use of purchase orders.
- d. Ensure that purchasing card purchases are in accordance with the County's ordinances, policies, and procedures.
- e. Ensure that the County bears no legal liability from inappropriate use of purchasing cards.
- f. Provide for disciplinary action if the purchasing cards are misused; and
- g. Ensure the purchasing card is used for County-authorized purchases only.

4.2 CARDHOLDER USE OF PURCHASING CARD

- a. The purchasing card shall only be used by the employee whose name is embossed on the card. No other person is authorized to use the card. The cardholder is responsible and accountable for all transactions that occur on his/her card.
- b. The purchasing card shall not be used for any personal use and any such use will require immediate reimbursement and will result in disciplinary action, which may include dismissal.

4.3 PURCHASING CARD REQUIREMENTS

- a. Prior to issuance of a purchasing card, the County Administrator or designee shall determine the single purchase limit and the 30-day purchase limit for the employee. The maximum limit shall be \$5,000 for a single purchase. Charges shall not be split to stay within the single purchase limit. Additional limitations may be imposed.
- b. When it is in the best interest of the County, the County Administrator or designee can override spending limits to authorize larger purchases.
- c. When in the best interest of the County, the County Administrator may authorize payment by credit card to take advantage of discounts.
- d. The Department Director or Division Manager shall review all employee purchasing card statements for compliance with County policies and procedures, sign statements indicating approval and ensure statements are processed in a timely manner. The County Administrator or designee shall review and approve all purchasing card statements for Department Directors or Administration staff. Statements approved by the Department Director or Division Manager which comply with purchasing card limits established by the County Administrator are not required to comply with signature authorization limits in Section 6.

4.4 PROHIBITED USES OF PURCHASING CARDS

The following types of items shall not be purchased with a purchasing card, regardless of the dollar amount:

- a. Cash advances
- b. Alcohol or drugs
- c. Capital equipment (equipment over \$1,000) except as provided in 4.8.
- d. Entertainment, except when authorized in writing by the County Administrator
- e. Professional or contracted services that are related to an active County contract
- f. Clothing, except uniforms for participants in County programs
- g. Food or Recreation, except as approved in writing by the County Administrator for County programs
- h. Travel expenses such as hotels, automobile rental, and airline tickets, unless cardholder has a card specifically authorized by the Department Director for travel expenses.
- i. Any additional goods or services specifically restricted by the Department Director or the County Administrator.

4.5 FAILURE TO ABIDE BY PURCHASING CARD POLICIES AND PROCEDURES

Failure to abide by the Manual policies and related procedures regarding purchasing cards may result in disciplinary action, up to and including termination. The employee may also be required to pay the County for inappropriate, unauthorized or undocumented purchases and the employee's purchasing card may be cancelled. If the cancellation of the purchasing card impacts the employee's ability to perform their essential job functions, appropriate personnel action may be taken.

4.6 SALES AND USE TAXES

The County is exempt from paying any State of Florida sales and/or use tax, even if the purchase is made with the purchasing card. If the vendor charges sales tax, the cardholder must contact the vendor to obtain a credit equal to the sales tax.

4.7 PURCHASING CARD DISASTER PLAN

In the event of a disaster type emergencies, the Department Director may temporarily raise single purchase and/or 30-day limits of select cardholders, which will be responsible for making necessary emergency purchases. For each cardholder selected by the Department Director an Emergency Limits increase Request Form shall be filled out and sent to the Purchasing Card Administrator. Temporary increases for Director's purchasing cards must be approved by the County Administrator or designee.

4.8 SPECIAL PURCHASES

When in the best interest of the County, purchases may be made with a specifically designated purchasing card that will be in the name of the OMB Director or designee.

SECTION 5 - PURCHASING PROCESSES

5.1 COMPETITIVE PROCESS POLICY

Normally, major purchases of materials, supplies, equipment, and contracted services from vendors will be acquired through competitive processes, including but not limited to, informal and formal quotations, invitations to bid (ITB), requests for proposals (RFP) and requests for qualifications (RFQ) as outlined in this Manual or pursuant to State Contract as provided by Chapter 287, Florida Statutes. The only exceptions permitted to this policy are those authorized in this Manual or authorized by the Board of County Commissioners.

5.2 EXEMPT PURCHASES

Certain purchases shall be exempt from the competitive processes as provided in this Manual:

- a. Purchases less than \$5,000.
- b. Intergovernmental purchases among County Departments.
- c. Governmental purchases of goods or services from or with other governmental agencies.
- d. The purchase of or payment for utility services, including but not limited to water and sewer, electric, telephone, internet, etc.
- e. The purchase of items under State Contract, General Services Administration Contract pursuant to Chapter 287, Florida Statutes, once approved by the Board during the budgetary process.
- f. Purchases of computer hardware and software over \$50,000 shall be at the discretion of the Board of County Commissioners.
- g. Purchase of library books, similar audio/visual materials, periodicals, printed library cards.
- h. Subscriptions for periodicals, magazines, newspapers, copyrighted material, etc. including costs related to update of code of laws and ordinances.
- i. Dues and memberships.
- j. Educational and/or personnel tests; training, tuition and fees for training instructors or facilitators.
- k. Professional services (not related to CCNA), commodities or services purchased directly from a governmental or nonprofit agency provided no conflict of interest exists.
- l. Legal Services including attorneys, expert witnesses, court reporter services and legal fees.
- m. As allowed by law, direct purchase of goods by a contractor on behalf of the County for a County project.
- n. Real Property acquisition, such as land, easements, rights-of-way, existing buildings or structures, resulting from negotiations and approved by the Board.
- o. Office, warehouse space, boat slip, submerged land or other property rental or lease.
- p. Railroad leases, maintenance & repair charges, and fees.
- q. Warranty or maintenance agreement costs required by the original manufacturer or installer.
- r. Service contracts for the maintenance, repair or servicing of existing facilities or equipment owned or leased by the County.

- s. Proprietary software maintenance agreements, upgrades, licenses and services.
- t. Debt service payments.
- u. Advertising in newspapers, magazines, and social media.

5.3 LOCAL PREFERENCE

Except where otherwise provided by federal or state law or other funding source restrictions or as otherwise set forth in the purchasing policy, St. Lucie County shall give preference to local businesses in the following manner:

- a. "Local Business" defined: For purposes of this section, "local business" shall mean a business which meets all of the following criteria:
 - 1. Has had a fixed office or distribution point located in and having a street address within St. Lucie, Indian River or Martin County for at least one year immediately prior to the issuance of the request for competitive bids or request for proposals by the county. The fixed office or distribution point must be staffed. Post office boxes are not verifiable and shall not be used for the purpose of establishing a physical address; and
 - 2. Holds any business license required by St. Lucie County; and is the principal offeror who is a single offeror; a business which is the prime contractor and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.
- b. Certification. Any vendor claiming to be a local business as defined above shall so certify in writing to the Purchasing Division. The certification shall provide all necessary information to meet the requirements of the definition of local business above. The purchasing agent shall not be required to verify the accuracy of any such certifications, and shall have the sole discretion to determine if a vendor meets the definition of a "local business."
- c. The bidder/proposer and all lower tiered subcontractors under the bidder/proposer must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding.
- d. "Non-local business" means a bidder which is not a local business.
- e. Waiver of the application of local preference. The application of Local Preference to a purchase or contract for which the Board is the awarding authority may be waived upon approval of the Board.
- f. Comparison of qualifications. The preferences established herein in no way prohibit the right of the Board to compare quality of materials proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids. Further, the preferences established herein in no way prohibit the right of the Board from giving any further preference permitted by law instead of the preferences granted herein.
- g. Local Preference – Invitations to Bid

Under any such applicable solicitation, bidders/proposers desiring to receive local preference will be invited and required to affirmatively state and provide documentation as set forth in the solicitation in support of their status as a local business. Any bidder who fails to submit sufficient documentation with their bid offer shall not be granted local preference consideration for the purposes of that specific contract award. Except where federal or state law, or any other funding source, mandates to the

contrary, St. Lucie County and its agencies and instrumentalities, will give preference to local businesses in the following manner:

1. Competitive bid (local price match option). Each formal competitive bid solicitation (i.e. sealed bids) shall clearly identify how the price order of the bids received will be evaluated and determined. When a qualified and responsive, non-local business submits the lowest price bid, and the bid submitted by one or more qualified and responsive local businesses is within 5% of the price submitted by the non-local business, then the local business with the apparent lowest bid offer (i.e.; the lowest local bidder) shall have the opportunity to submit an offer to match the price(s) offered by the overall lowest, qualified and responsive non-local bidder.
2. In such instances, staff shall first verify if the lowest non-local bidder and the lowest local bidder are in fact qualified and responsive bidders. Next, the Purchasing Division shall determine if the lowest local bidder meets the requirements of Section 287.087, Florida Statutes. If the lowest local bidder meets the requirements of 287.087, Florida Statutes, the Purchasing Division shall invite the lowest local bidder in writing to submit a matching offer to the Purchasing Division which shall be submitted in writing to the Purchasing Division within 5 business days thereafter.
3. If the lowest local bidder submits a written offer that does not fully match the lowest bid from the lowest non-local bidder tendered previously, the next lowest fully qualified local bidder will be given the opportunity to match if they are within 5%. This cycle shall be repeated until there are no remaining local bidders within 5%, and then award shall be made to the non-local bidder. If the lowest local bidder does not respond, declines or is unable to match the lowest non-local bid price(s), then award will be made to the lowest overall qualified and responsive bidder. If the lowest local bidder does not meet the requirement of Section 287.087, Florida Statutes, and the lowest non-local bidder does, the lowest local bidder will be disqualified and the next lowest local bidder will be considered if they are within 5%, award will be made to the bidder that meets the requirements of the referenced state law. In the event a local bidder is awarded a contract pursuant to this section, all requests for change orders increasing the cost of the project must be approved by the Board.

h. Local Preference – Requests for Proposals (RFP)

In purchasing of, or letting of contracts for procurement of, personal property, materials, contractual services, and construction of improvements to real property or existing structures for which a request for proposals is developed with evaluation criteria, a local preference of the total score may be assigned for a local preference, as follows:

1. Local businesses which meet all of the criteria for a local business as set forth in this article shall be given a preference in the amount of five percent of the total score of the local business.
 2. Based upon analysis of the marketplace for each project, staff shall make a recommendation for or against inclusion of a local preference in the criteria for consideration by the Board as a part of the pre-publication process for each request for proposal or bid.
- i. Notice. Both bid documents and request for proposal documents shall include notice to vendors of the local preference policy.
- j. Reciprocity. In the event any other Florida county or municipality (“local government”) deemed appropriate by the Board, extends preferences to local businesses, St. Lucie County may enter into an interlocal agreement with such local government wherein the preferences of this section may be extended and made available to vendors that have a valid occupational license issued by that specific local government to do business in that local government that authorizes the vendor to provide the commodities and services to be purchased, and a physical business address located within the limits

of that local government. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Vendors must also be authorized to do business in St. Lucie County. Vendors shall affirm in writing their compliance with the foregoing at the time of submitting their bid to be eligible for consideration as a "local business" under this section. In no event shall the amount of the preference accorded other local government firms exceed the amount of preference that such local government extends to St. Lucie County firms competing for its contracts.

k. Limitations.

1. The provisions of this policy shall apply only to procurements which are above the formal bid threshold as set forth in the St. Lucie County Purchasing Policies Manual.
2. The provisions of this policy shall not apply where prohibited by federal or Florida law or where prohibited under the conditions of any grant.
3. The provisions of this policy shall not apply to any purchase exempted from the provisions of the St. Lucie County Purchasing Policies Manual.
4. The provisions of this policy shall not apply to contracts made under the Consultants Competitive Negotiation Act (CCNA), Section 287.055, Florida Statutes.
5. The provisions of this policy shall not be applied to any procurement where the local nature of a business has been addressed through the scoring criteria.

5.4 PUBLIC ENTITY CRIMES

- a. Pursuant to Section 287.133, Florida Statutes, the Board shall not accept any bid from, award any contract to, or transact any business in excess of \$25,000 with any person or affiliate on the Convicted Vendor List kept by the State of Florida Department of General Services for a period of thirty-six (36) months from the date that person or affiliate was placed on the Convicted Vendor List that unless that person or affiliate has been removed from the list pursuant to Section 287.133(3)(f), Florida Statutes.
- b. All Invitations to Bid, Requests for Proposals and Requests for Qualifications shall include provisions regarding public entity crimes in compliance with Section 287.133, Florida Statutes, as it may be amended, and as provided by the County Attorney.
- c. In the event that the Board was transacting business with a person at the time of the commission of a Public Entity Crime which resulted in that person being placed on the Convicted Vendor List, the Board shall not accept any bid from, award any contract to, or transact any business with any other person which under the same, or substantially the same, control as the person whose name appears on the Convicted Vendor List so long as that person's name appears on the Convicted Vendor List.
- d. For the purposes of this section, the following definitions shall apply:
 1. "Affiliate" means a predecessor or successor of a person convicted of a Public Entity Crime; or, an Entity under the control of any natural person who is active in the management of the Entity and who has been convicted of a Public Entity Crime. The term "Affiliate" includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a Public Entity Crime in Florida during the preceding thirty-six (36) months shall be considered an Affiliate.
 2. "Convicted" or "Conviction" means a finding of guilt or a conviction of a Public Entity Crime, with or without an adjudication of guilt, in any Federal or State Trial Court of Record relating to charges

brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

3. "Convicted Vendor List" means the list required to be kept by the State of Florida Department of Management Services.
 4. "Person" means any Natural Person, or any Entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by the Board of County Commissioners or which otherwise transacts or applies to transact business with the Board of County Commissioners. The term "Person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an Entity.
 5. "Public Entity" means the State of Florida, any of its departments or agencies, or any political subdivision.
 6. "Public Entity Crime" means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any Public Entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, to be provided to any Public Entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- e. Each Vendor shall be required to comply with the requirements of Section 287.133 Florida Statutes.
- f. The following statement, as it may be amended by the County Attorney, shall appear in all bid specifications and Requests for Proposals:

PUBLIC ENTITY CRIMES: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to the County, may not submit a bid, proposal, or reply on a contract with the County for the construction or repair of a public building or public work, may not submit bids, proposals or replies on leases of real property to the County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$25,000 for a period of 36 months from the date of being placed on the convicted vendor list.

The County will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a (Section 274A(e) of the Immigration and Nationality Act ("INA")). The County shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the Agreement by the County.

5.5 PIGGYBACKING: PURCHASE OF GOODS, EQUIPMENT, AND CONTRACTUAL SERVICES FROM OTHER GOVERNMENTAL BIDS

- a. In lieu of informal or formal quotations, or issuance of an Invitation to Bid, the County may piggyback off of contracts of other governments and agencies to procure goods and services if the following conditions are present:
 1. The bid documents and selection procedures used by the other government or agency are consistent with the County's purchasing regulations; and

2. The vendor is willing to sign a county contract form (if applicable) as prepared by the County Attorney's Office; and
 3. The vendor is willing to offer to the County the same unit prices used in the original contract/bid; and
 4. The unit prices in the original contract(s) include every item that the County intends to purchase from the vendor.
- b. Piggybacking may not be used for the following types of agreements, unless first approved by the County Administrator:
1. Construction services
 2. Professional services contracts
 3. Any good or service where the County would utilize a Request for Proposals or a Request for Qualifications.
- c. The County allows other governmental entities to piggyback off of its contracts.
- d. Approval of a bid waiver is not required to piggyback off contracts which meet the requirements of this section.

SECTION 6 – AUTHORIZATION LIMITS

6.1 SIGNATURE AUTHORITY

The signature authority for purchases of usual and ordinary goods and services, including but not limited to, requisitions, purchase orders, work authorizations, contracts, and contract amendments, is listed below. Signature authority for work authorization amendments and change orders is indicated in Sections 17.2 and 18.1, respectively. The signature authority may be delegated in writing on a temporary basis due to the absence of the authorized employee or a vacancy in the position or such other situations as necessary to ensure continuity of County operations. As determined by the County Administrator, purchase of goods and services that are not typical of or necessary for County operations and management and/or were not approved in the budget may require Board approval.

- a. \$500 or less – any authorized employee approved by the Department Director or Division Manager.
- b. \$5,000 or less – Division Manager or other Manager approved by the Department Director
- c. \$15,000 or less – Department Director; the County Administrator may authorize up to \$20,000 for specific Department Directors.
- d. \$25,000 or less – Assistant County Administrator
- e. \$50,000 or less – County Administrator
- f. Contracts for more than \$50,000 will be presented to the Board for approval and executed by the Chair of the Board or the Vice-Chair in the Chair's absence. All contracts executed by the Board must be attested to by the Clerk of the Board or a Deputy Clerk as determined by the Clerk.

6.2 EXCEPTIONS

- a. The purchase of or payment for goods and services which have been specifically approved by the Board in the Department/Division budget or through an agenda item are not subject to signature authorization requirements. Procedures will be established by the County Administrator which ensure these transactions are processed in accordance with the Board approval. The procedures shall require the user Department Director and the OMB Director or designee to review and approve the purchase or payment documents.
- b. Payments for utility bills, including electric, water, sewer, phone, internet, and related services and purchasing card statements are exempt from authorization limits and shall be processed in accordance with procedures established by the County Administrator. The procedures shall require Department Directors to review and approve payment of purchasing card statements.
- c. The Board or the County Administrator (up to \$50,000) may increase the signing authority of a director or other employee for purposes of a specific program or purposes. Such increase shall be approved in writing and specify the limitations of the signing authority.

SECTION 7 - PURCHASES OF \$50,000 OR LESS – FORMAL AND INFORMAL QUOTES

7.1 QUOTATION THRESHOLDS

- a. Purchases of \$5,000 or less are exempt from Section 7 policies.
- b. Purchases of goods or services over \$5000 and up to and including \$15,000 normally will be acquired through informal quotations.
- c. Purchases of goods or services over \$15,000 up to and including \$50,000 normally will be acquired through formal quotations.
- d. If there is a sole source for an item \$50,000 or less, the requirement for formal/informal quotations may be waived by the County Administrator or designee based upon written justification.
- e. Competition is facilitated by obtaining at least three quotes. As often as feasible, local vendors should be utilized. The Purchasing Division shall maintain an updated list of local vendors and the goods and services they provide.
- f. Utmost care must be taken to ensure that vendors are given exactly the same information and that prices are not disclosed from one vendor to another.

7.2 INFORMAL QUOTATIONS

- a. Informal quotations are used for purchases of items or services more than \$5,000 and up to and including \$15,000 and may be obtained by telephone, in person or in writing.
- b. The most responsive, responsible bidder should be selected. For purposes of this section, the most responsive, responsible bidder shall be the bidder whose proposal is determined to be most advantageous to the County taking into consideration factors identified in the quote, such as
 1. Price;
 2. Capability, integrity and reliability of the bidder to assure good faith performance;
 3. Environmentally preferred purchasing;
 4. Completion and/or delivery date; and/or
 5. Other relevant evaluation factors.

7.3 FORMAL QUOTATIONS

Formal quotations shall be used for purchases of items or services over \$15,000 and up to and including \$50,000 or when bidding requirements have been waived or exempted for items or services over \$50,000 as provided in this Manual.

- a. Formal quotations will be solicited in writing with proper specifications from at least three (3) vendors if feasible. Requests for formal quotations are not required to be advertised.
- b. If the specifications for a formal quotation are changed after the original notice to vendors, the requesting Department shall issue an addendum.
- c. The most responsive, responsible bidder should be selected. For purposes of this section, the most responsive, responsible bidder shall be the bidder whose proposal is determined to be most advantageous to the County taking into consideration factors identified in the quote, such as
 1. Price;
 2. Capability, integrity and reliability of the bidder to assure good faith performance;

3. Environmentally preferred purchasing;
 4. Completion and/or delivery date; and
 5. Other relevant evaluation factors.
- d. For purchases over \$50,000, when bidding requirements have been waived and three formal quotations have been received, the Department Director or Division Manager shall make the determination of the most responsive, responsible bidder.

SECTION 8 - PURCHASES GREATER THAN \$50,000 – INVITATIONS TO BID

Except as provided elsewhere in the Manual, purchase of goods and services for more than \$50,000 shall be acquired through Invitations to Bid (ITB) which requires submission of formal sealed bids or under a State Contract, or Federal General Services Administration Contract pursuant to Chapter 287, Florida Statutes.

8.1 BID WAIVER

Certain purchases for more than \$50,000 shall be acquired through quotations if there is a waiver of the requirement for formal sealed bids by the Board of County Commissioners.

- a. The waiver of formal sealed bids may be requested based on one of the following:
 1. If an emergency exists which would result in a direct loss to the County or imminent damage to public property, safety or health by requiring competitive bids due to the time loss inherent in the bidding procedures, or there is an interruption of an essential governmental service. In cases of emergency, the County Administrator may approve the bid waiver and submit the waiver request to the Board at the next scheduled meeting or a special meeting.
 2. If there is only a single source for the goods or service.
 3. If used items are available that would provide substantial savings over purchase of new items.
 4. If quotations indicate that the item may be purchased for a price which is less than the price if purchased through State Contract as provided by Chapter 287, Florida Statutes.
 5. If the product is available from the State Department of Corrections Nonprofit Corporation for Correctional Work Programs organized under Chapter 946, Florida Statutes, as it may be amended.
 7. If no bids or only one bid is received in response to a request for formal sealed bids.
 8. Direct or competitive negotiations for construction services authorized by Section 255.20 of the Florida Statutes and including negotiations for Construction Management Services authorized by Section 255.103 and design-build services authorized by 287.055 of the Florida Statutes.
 9. If the funding source for the project or contract will be diminished or lost because the time required to competitively award the project or contract after the funds become available exceeds the time within which the funds must be spent, or project completed.
 10. If the Board determines that it is in the best interests of the County to do so.
- b. All bid waiver requests for construction projects must be approved by the County Attorney's office to ensure compliance with FS 255.20 prior to scheduling the public hearing. No bid waiver shall be required for procurements using the prequalification or shortlisting methods, set forth in Section 11, followed by sealed bids by the prequalified or shortlisted firms.

8.2 INVITATIONS TO BID

Invitations to Bid (ITB) are formal sealed bids and will normally be used for purchases of goods and services more than \$50,000.

- a. Except as stated herein, St. Lucie County follows the general criteria set forth in Section 287.057, Florida Statutes, for the acquisition of commodities (i.e., goods) and contractual services (i.e., construction contracts, maintenance, and repair contracts).
- b. A public announcement of the ITB shall be made through a local newspaper for one day (required) and other approved media, including an agreement with an outside provider of such services. The announcement shall include a description of the project and/or goods required, and where interested bidders may apply for consideration. All bid information will be available on the internet.

- c. The ITB for construction contracts must include requirements for complying with the Apprenticeship Program requirements as provided in Section 18.
- d. As allowed by law, the ITB must include Local Preference criteria provided in Section 5 unless waived by the Board.
- e. If the specifications for an ITB are changed after the original advertising and mailing to vendors, the addendum procedure will be implemented. The addendum shall clearly point out any addition or change to the specifications. All prospective bidders who have received specifications are to be notified of the addendum by email or fax. The vendor is responsible to obtain and incorporate all addenda into their bid. No addendum shall be issued five (5) days prior to a bid opening without extending the bid opening date unless the change or clarification does not materially affect the bid.
- f. The bid shall be considered responsive if it answers all required information, contains any and all required bonds, and is duly signed by an authorized officer of the entity on behalf of the entity. Only complete bids shall be considered. Any incomplete bid shall be deemed as non-responsive.
- g. The Board reserves the right to:
 - 1. Waive any informalities or minor irregularities;
 - 2. Reject any and all bids which are incomplete, conditional, obscure, or which contain additions not allowed for in the bid;
 - 3. Cancel, accept or reject any and all bids in whole or in part with or without cause;
 - 4. Disqualify any and all bidders if there is any reason to believe that collusion or fraud exists among bidders; or
 - 5. Accept the bid which best serves the County.
- h. The bids will be received until the prescribed time and will be opened immediately thereafter. The following minimum criteria shall be considered in order of importance in evaluating bids.
 - 1. Price;
 - 2. Compliance with ITB specifications, including delivery date, materials, processes, etc. Should the low bid be responsive but deviate from the specifications contained in the ITB, such deviation shall be reviewed for suitability to achieve the County's purpose; and
 - 3. Compliance with other Board purchasing policies such as the Local Preference policy and the Apprenticeship policy as applicable.
- j. The Department Director or designee shall make a recommendation to the Board regarding the award of the ITB.

SECTION 9 - REQUEST FOR PROPOSALS

A Request for Proposal (RFP) is a purchasing method that is utilized when a variety of relevant factors in addition to price will be evaluated.

9.1 RFP CONTENTS

- a. A public announcement of the RFP shall be made through a local newspaper for one day (required), and other approved media and shall include a description of the project, services and/or goods required, and where interested bidders may apply for consideration.
- b. The RFP shall include, but is not limited to, the following:
 1. Description of the scope of services requested. The description shall be sufficient to assure that all proposers have the same understanding of the requested services, material or product specifications, time schedule and expectations.
 2. Request for specific and general information on how the proposer will proceed with the project including written documentation of the proposer's expertise and ability to perform the requested service.
 3. Requirements for submission of concept plans or approaches, if applicable.
 4. The criteria upon which the proposal will be evaluated, including the Local Preference criteria as provided in Section 5 and the Apprenticeship requirement as provided in Section 18, as applicable.
 5. Specific instructions on how, when and where the proposals shall be submitted, including the date the proposal will be opened.
 6. Requirement that the proposal be submitted as a sealed package and contain all required information, documents and signatures.
 7. Statement that the Board reserves the right to reject all irregular proposals or to reject all proposals if it is deemed by the Board to be in the best interest of the County.

9.2 RFP AWARD

- a. The County Administrator or designee shall approve the appointment of a selection committee which shall not be composed of more than 50% of members from the user department unless approved by the County Administrator in advance. If multiple departments will be utilizing the contract, no single department shall compose more than 50% of the committee members. The Board may exercise its option to appoint itself to serve as the selection committee.
- b. The Department Director or the Purchasing Division shall make a recommendation to the Board regarding the award of the RFP if the cost is more than \$50,000.
- c. The Board reserves the right to:
 1. Waive any informalities or minor irregularities;
 2. Reject any and all proposals which are incomplete, conditional, obscure, or which contain additions not allowed for in the proposal;
 3. Cancel, accept or reject any and all proposals in whole or in part with or without cause;
 4. Disqualify any and all proposers if there is any reason to believe that collusion or fraud exists among proposers; or
 5. Accept the proposal which best serves the County.

SECTION 10 – REQUEST FOR QUALIFICATIONS

A Request for Qualifications (RFQ) is a purchasing process utilized to select firms or businesses to provide goods, equipment, or services based on qualifications. This process is also required for selection of professional services specified in the Consultants Competitive Negotiation Act (CCNA), Section 287.055, Florida Statutes.

10.1 RFQ CONTENT

- a. A public announcement of the RFQ shall be made through a local newspaper for one day (required) and other approved media and shall include a description of the project, goods and/or services required, and where interested bidders may apply for consideration.
- b. The RFQ shall include, but is not limited to:
 1. A description of the scope of services requested. The description shall be sufficient to assure that all proposers have the same understanding of the requested services, time schedule and expectations.
 2. A request for specific and general information on how the proposer is qualified to perform the requested services, including examples of prior work and references.
 3. Requirements for submission of concept plans or approaches, if applicable.
 4. Criteria upon which the proposal will be evaluated, including the Local Preference criteria as provided in Section 5, as applicable.
 5. Specific instructions on how, when, and where the proposals shall be submitted including the date the proposal will be opened.
 6. Requirement that the proposal be submitted as a sealed package and include all required information, documents and signatures.
 7. Statement that the Board reserves the right to reject all irregular proposals or to reject all proposals if it is deemed by the Board to be in the best interest of the County.

10.2 RFQ AWARD

- a. Responses to RFQs shall be evaluated by a selection committee appointed by the County Administrator or designee. The selection committee shall not be composed of more than 50% of members from the user department unless approved by the County Administrator in advance. If multiple departments will be utilizing the contract, no single department shall compose more than 50% of the committee members. The Board may exercise its option to appoint itself to serve as the selection committee.
- b. The Department Director or Purchasing Division shall make a recommendation to the Board regarding the award of the RFQ if the cost is more than \$50,000. Upon the selection of a short-list of qualified firms approved by the Board, and unless otherwise directed by the Board, staff may:
 1. Enter into scope of work and fee negotiations with the firm or firms determined to be qualified; or
 2. Issue Invitations to Bid or Requests for Proposals to short-listed firms.
- c. The Board reserves the right to:
 1. Waive any informalities or minor irregularities.
 2. Reject any and all proposals which are incomplete, conditional, obscure, or which contain additions not allowed for in the proposal.
 3. Cancel, accept or reject any and all proposals in whole or in part with or without cause.
 4. Disqualify any and all proposers if there is any reason to believe that collusion or fraud exists among proposers; and/or
 5. Accept the proposal which best serves the County.

- d. Professional services regulated by CCNA, including Design-Build, may be acquired through RFQs provided that the requirements of Section 13 of this Manual are met.

SECTION 11 – SPECIALTY CONSTRUCTION PROCUREMENTS

When determined by the Department Director to be in the best interest of the County, the following specialty construction procurements allowed by Florida law may be utilized:

1. Prequalification and Shortlisting
2. Continuing Contracts for Construction Projects
3. Design-Build
4. Construction Management

11.1 PREQUALIFICATION AND SHORTLISTING

- a. The County may utilize a two-step process in selecting contractors for standard design-bid-build delivery, using either prequalification or shortlisting as an initial step to select a pool of bidding or proposing contractors that are, in the County's sole discretion, appropriately qualified to perform the proposed work.
 1. Pre-qualification is a method of procurement where prospective bidders or proposers are initially evaluated on a pass-fail basis to determine whether they possess the requisite qualifications necessary to perform the work. (**Note:** Projects involving the construction or improvements of bridges, roads, streets, highways or railways and services incidental thereto, at a cost exceeding \$250,000, the County shall follow the special prequalification rules set forth in Section 255.20(1)(a) and (b) of the Florida Statutes).
 2. Shortlisting is a method of procurement where prospective bidders or proposers are initially evaluated, comparatively, to determine which bidders or proposers are the most qualified, in the County's sole discretion, to perform the work.
- b. The County shall follow the procedures set forth in Section 10 of this Policy Manual in issuing an RFQ to obtain Statements of Qualification from interested proposers. On receipt of Statements of Qualification, the County, through an appointed Selection Committee, shall evaluate the Statements as follows:
 1. In the pre-qualification method, the Selection Committee shall render pass-fail determinations to arrive at a pool of contractors that meet all of the qualifications criteria set forth in the RFQ and reject all contractors that fail to meet the qualifications criteria.
 2. In the shortlisting method, the Selection Committee shall comparatively evaluate proposers, in accordance with the qualifications criteria set forth in the RFQ, to arrive at a pool of the most highly qualified contractors eligible to bid or propose on the work.
 3. The Selection Committee may require presentations or interviews as part of the evaluation process. The Selection Committee shall use best efforts to arrive at a shortlist or prequalification list of no less than three qualified contractors, if reasonably possible.
 4. Only those contractors that are prequalified or shortlisting shall be issued bid or proposal documents and be permitted to bid or propose on the work.
- c. Following the initial step of constituting a prequalification list or shortlist of eligible contractors, the County shall initiate the next step in the procurement process and final award as follows:

1. The County may request sealed bids in accordance with the ITB procedure set forth in Section 8 of this Policy Manual, to make award to the lowest, responsive bidder; or
2. The County may request proposals in accordance with the RFP procedure set forth in Section 9 of this Policy Manual, where award shall be made to the most advantageous proposal based on the criteria and standards set forth in the proposal documents, which criteria may include price, schedules and technical or design aspects of the project, weighted as set forth in the proposal documents.

11.2 CONTINUING CONTRACTS FOR CONSTRUCTION PROJECTS

- a. Continuing contracts for construction projects (hereinafter "Continuing Contracts") are contracts with a Contractor, as defined by Section 255.103 of the Florida Statutes, for work during a defined period on construction projects described by type rather than specifically identified ("Continuing Contractor"). Continuing Contracts shall involve a base form contract for a period no greater than five (5) years, generally outlining the types of work or projects. Specific work awarded under a Continuing Contract shall be by work authorization or contract addendum.
- b. The estimated value of any construction work awarded by addendum or work authorization shall not exceed \$2 million, unless other exceptions under Section 255.20 of the Florida Statutes apply. The County shall competitively negotiate each such award for a contract sum that it determines is fair, competitive, and reasonable. If the County selects a pool of Continuing Contractors, it may bid each work authorization or addendum among the pool, with an award being made to the lowest, responsive bidder.
- c. The County shall procure Continuing Contractors in accordance with Section 255.103 and 287.055 of the Florida Statutes, and the general Request for Qualifications Procedure set forth in Section 10 of this Policy Manual.
- d. Following the submission of Statements of Qualification, a Selection Committee appointed by the County Administrator shall shortlist no fewer than three (3) proposers, if reasonably possible, based on the following minimum criteria ("CCNA Factors"):
 1. Ability of construction personnel;
 2. Whether a firm is a certified minority business enterprise;
 3. Past performance (on County projects or comparable projects for others, and may include an assessment of claims history);
 4. Experience;
 5. Willingness to meet time and budget requirements;
 6. Location;
 7. Recent, current and projected workloads; and
 8. The volume of work previously awarded to proposer, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selecting the most highly qualified.

The Selection Committee shall conduct discussions with, and may require presentations by, the shortlisted proposers. Following discussions and presentations, the Selection Committee shall select in order of preference (i.e., a ranking) no fewer than three (3) proposers, if reasonably possible, deemed to be the most highly qualified to provide the advertised services.

11.3 DESIGN-BUILD

- a. Design-Build is an integrated project delivery method where architectural, engineering and construction services are awarded to a Design-Build Firm under a single contract procured in accordance with the requirements of the Consultants' Competitive Negotiation Act ("CCNA"), Section 287.055 of the Florida Statutes, and the requirements of this Policy Manual Section.
- b. A "Design-Build Firm", as defined by the CCNA, is a partnership, corporation, or other legal entity which:
 1. Is certified under Florida Statutes 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
 2. Is certified under the relevant provisions of Florida Statutes 471.023, 481.219, 481.319, to practice or offer to practice engineering, architecture, or landscape architecture, respectively.
- c. The County shall follow the Design-Build procedures in accordance with the CCNA to award Design-Build contracts, which include a qualifications-based selection procedure or a competitive proposal procedure, as set forth in Section 287.055 (9) of the Florida Statutes. The County Administrator will determine which procurement procedure will be used to award a Design-Build contract.
 1. If the County elects to use a qualifications-based selection process for Design-Build Firms, it shall follow the procedures set forth in Section 10 of this Policy Manual and CCNA Sections 287.055 (3) – (5).
 2. If the County elects to use the competitive proposal process for the selection of Design-Build Firms, the County must comply with the minimum requirements of the CCNA, as follows:
 - A. A Design Criteria Professional, selected in accordance with the requirements of the CCNA, will prepare and seal a Design Criteria Package in order to furnish sufficient information to allow Design-Build Firms to prepare a Bid or Proposal for the Project. The Design Criteria Professional and their sub-consultants will not be eligible to provide design services under any Design-Build Contract executed pursuant to the Design Criteria Package.
 - 1) A "Design Criteria Professional" means a firm who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.
 - 2) A "Design Criteria Package" means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to a request for proposal, or to permit an agency to enter

into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.

- B. The Selection Committee shall initially qualify and shortlist no fewer than three Design-Build Firms, if reasonably possible, based on the qualifications, availability, and past work of the Design-Build Firms, including the partners or members thereof. The County may also specifically consider the Design-Build Firm's past performance on County Projects, including whether the past Projects resulted in any litigation, whether the past Projects were completed on time, within budget, and without an unreasonable number or amount of claims and whether the Design-Build Firms timely paid its subcontractors and suppliers. The County may also consider whether:
- 1) The Design-Build Firms have breached any contract with the County or any other public agency;
 - 2) Whether liquidated damages have ever been assessed against the Design-Build Firms;
 - 3) Whether the Design-Build Firms properly participated in any required mediation or dispute review board procedures; and
 - 4) The overall satisfaction with the Design-Build Firm's compliance with the contract requirements.
- C. Only those Design-Build Firms shortlisted in accordance with the procedures set forth herein, shall be permitted to submit a bid or proposal for the Project.
- D. Before soliciting bids or proposals for the Project, the County will establish the criteria, procedures and standards by which all bids or proposals submitted by Design-Build Firms for the Project will be evaluated. These standards will include, but are not limited to, price, technical merit and design aspects, weighted for the proposed Project. Any bid or proposal submitted by a Design-Build Firm must meet the criteria specified in the Design Criteria Package.
- E. If the Design-Build evaluation is based on assignment of a "Numeric Score" based on a scoring of the evaluation criteria, the Selection Committee will determine the "Numeric Score" and recommend award to the qualified and responsive proposer with the lowest "adjusted score." The adjusted score will typically be the total price divided by the total numeric score, as defined in the bid or proposal documents.

11.4 CONSTRUCTION MANAGEMENT

- a. Construction Management is a project delivery methodology whereby the County enters into a contract with a contractor to provide construction and pre-construction services for a project, including design and constructability reviews, scheduling and estimating. Construction Management may be on the preferred method of "at risk" where the contractor holds the trade contracts (i.e., subcontracts), or "at agency" where the County holds the trade contracts and the Construction Management firm is responsible for coordinating, supervising and managing the construction project. Any "at risk" Construction Management contract should be on a Guaranteed Maximum Price basis; any "at agency" Construction Management contract should be on a lump sum basis.
- b. Construction Management firms may be procured on a qualification's basis or through competitive proposals.
 1. If the County elects to use a qualifications-based selection process for Construction Management firms, it shall follow the procedures set forth in Section 10 of this Policy Manual and the CCNA, Sections 287.055 (3) – (5).
 - A. The qualifications criteria for evaluation shall include, but not be limited to, the following:
 - 1) The experience of the CM and its professional personnel;
 - 2) The CM's project approach for preconstruction and construction;
 - 3) Whether the CM is a certified minority business enterprise (and/or the proposed level of certified minority and/or small business enterprise participation);
 - 4) Past performance;
 - 5) Experience;
 - 6) Willingness to meet time and budget;
 - 7) Location
 - 8) Recent, current and projected workloads; and
 - 9) The volume of work previously awarded to each CM, with the object of effecting an equitable distribution of contracts among qualified contractors, provided such distribution does not violate the principle of selection of the most highly qualified CM.
 - B. The evaluation of past performance may include such factors as:
 - 1) Whether past projects were completed on time, within budget, and without an unreasonable number or amount of claims;
 - 2) Whether the CM timely paid its subcontractors, subconsultants and suppliers;
 - 3) Whether the CM has breached any contract with the County or any other public agency, or has been termination for cause of convenience;
 - 4) The County's overall satisfaction with the CM's current and past compliance with its contractual requirements.
 - C. The Selection Committee shall evaluate Statements of Qualification submitted by interested Construction Management firms to arrive at a shortlist of the most highly qualified CMs based on the evaluation criteria set forth in the proposal documents and this Policy Manual. The Selection Committee shall require interviews, and may require public presentations, from each CM on the shortlist, and thereafter prepare a recommended ranking, in order of preference, of no fewer than three

CMs (where reasonably possible), deemed to be the most highly qualified to perform the advertised services.

D. The County shall thereafter negotiate a contract with the top ranked firm at compensation that the County determines is fair, competitive and reasonable. Should the County not reach a contract with the top ranked firm, it shall terminate negotiations, and then proceed in order of ranking until a contract is reached or the County elects to terminate the procurement.

2. If the County elects to use a competitive proposal selection process for Construction Management firms, the County shall follow a two-step process, commencing with a qualifications-based shortlist following the procedures outlined in Section 1(A) above. The County shall thereafter issue a Request for Proposal to the shortlisted CMs, setting forth the criteria and procedures by which all proposals will be evaluated. These criteria may include but are not limited to, price components (such as preconstruction services fees, general conditions, profit/fee and insurance rates), schedule, technical design aspects, preconstruction services plan, project approach, and small and minority business participation goals. The basis of award, whether it be price-driven (i.e., bids) or based on scoring of all criteria, shall be set forth in the RFP.

11.5 PUBLIC-PRIVATE PARTNERSHIPS

- a. The Florida Legislature has enacted Section 255.065 of the Florida Statutes (“F.S.”) to specifically authorize counties and other public entities in Florida enter into public-private partnerships for the design, funding, permitting, construction, upgrade, operation, maintenance, repair and replacement from time to time of facilities that are used predominantly for public purposes. The St. Lucie Board of County Commissioners has also determined that it is in the public’s interest to provide for such public-private partnerships for qualifying projects as defined in Section 255.065, F.S. and to adopt procedures in accordance with Section 255.065, F.S., and this Purchasing Policy Manual regarding procurement of such projects. It is the intent of the County Commission to encourage investment in St. Lucie County by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.
- b. The County may receive unsolicited proposals or may solicit proposals for a qualifying project and may thereafter enter into an interim agreement or a comprehensive agreement (a “Public-Private Agreement”) with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities in accordance with Section 255.065, F.S., and this Purchasing Policy Manual.
- c. Prior to solicitation of any Public-Private Agreement on any qualifying project the proposed solicitation shall be submitted to the Board of County Commissioners for its review and approval. Staff shall present a detailed outline of the proposed qualifying project, the anticipated solicitation process, the project schedule and the public interest anticipated to be addressed by the Public-Private Agreement. The final form of any Public-Private Agreement shall be submitted to Board of County Commissioners for its review and approval at a public meeting.
- d. The private party proposer shall pay all reasonable costs of review and analysis of its proposal. Any private entity that submits an unsolicited proposal to the County must concurrently pay the initial application fee as from time to time established by the County in cash, cashier’s check, or other noncancelable instrument. Personal checks shall not be accepted. If the County determines in its sole discretion that the initial application fee does not cover the County’s reasonable costs to evaluate

the unsolicited proposal, the County may request that the private proposer pay the additional amounts required to cover such cost. The private proposer must pay the requested additional amounts within thirty (30) days after receipt of the County's written request and the County may stop its review of the proposal if the private entity fails to pay the additional amounts. If the County in its sole discretion elects not to evaluate the unsolicited proposal, it shall return the application fee. The County also may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants

- e. Upon receipt of any unsolicited proposal or determination to issue a request for proposals, the County shall publish advertisement(s) of same in accordance with the County's advertisement requirements as set forth in this Purchasing Policy Manual or, if the proposal is for a "qualifying project" as defined in Section 255.065(1)(i), F.S., the County shall advertise as set forth in Section 255.065(3)(b), F.S. The timeframe within which the County may accept other proposals shall be determined by the County on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; provided, however, that for qualifying projects the timeframe for allowing other proposals must be at least twenty-one (21) days but no more than one hundred twenty (120) days after the initial date of publication. If approved by a majority vote of the County Commission, the County may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.
- f. If any qualifying project solicited by the County includes design work, the solicitation shall include a design criteria package prepared by an architect, a landscape architect, or an engineer licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify reasonably specific criteria for the qualifying project such as the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the qualifying project; cost or budget estimates; design and construction schedules; and site development and utility requirements. The licensed design professional who prepares the design criteria package shall be retained to serve the County through completion of the design and construction of the project.
- g. Before approving a comprehensive agreement, the County must determine that the proposed project:
 - 1. Is in the public's best interest.
 - 2. Is for a facility that is owned by the County or for a facility for which ownership will be conveyed to the County.
 - 3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the County.
 - 4. Has adequate safeguards in place to ensure that the County or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
 - 5. Will be owned by the County upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.
- h. Before signing a comprehensive agreement, the County must consider a reasonable finance plan that is consistent with Section 255.065(9), F.S; the qualifying project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning

with the implementation of the project and extending for the term of the comprehensive agreement. To assist the County in analyzing such financing plan applicants shall provide County with such financial information as the County may request including, without limitation, providing at least two (2) years of audited financial statements and documentation evidencing 100% of the proposed funding source (e.g., providing a loan commitment for 70% funding with documentation detailing the source of 30% equity financing).

- i. In considering an unsolicited proposal, the County may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.
- j. After the public notification period has expired in the case of an unsolicited proposal, the County shall rank the proposals received in order of preference. In ranking the proposals, the County may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, proposed property management structures and finance plans. The proposer shall submit a preliminary plan for development and use of the subject property which plan and use may be modified and refined in coordination with County. The County may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the County is not satisfied with the results of the negotiations, the County terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the County may negotiate in good faith, and if the County is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the County may reject all proposals at any point in the process until a contract with the proposer is executed.
- k. The County shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.
- l. Approval of a qualifying project by the County is subject to entering into a comprehensive agreement with the private entity.

SECTION 12 - RESOLUTION OF SOLICITATION AND PROPOSED AWARD PROTESTS

12.1 RIGHT TO PROTEST

Any actual or prospective bidder or offeror who believes he is aggrieved in connection with the solicitation or proposed award of a contract may file a written protest with the County Administrator or designee. The protest shall be submitted in writing within twenty-four (24) hours, not including Saturdays, Sundays or County closings, after such aggrieved person knows or should have known the facts giving rise to the alleged grievance.

12.2 RESOLUTION OF PROTESTS

- a. The County Administrator or designee shall consult with the County Attorney concerning any protest involving the solicitation or prospective award of a contract bid. Following consultation with the County Attorney, the County Administrator or designee shall attempt to resolve the protest.
- b. If the protest is not resolved by mutual agreement, a written decision on the protest shall be issued by the County Administrator after consultation with the County Attorney. Copies of the written decision will be mailed to the protesting vendor and any other vendor requesting a copy. The written decision shall:
 1. State the reasons for the decision.
 2. Inform the protesting vendor of his right to administrative review.
- c. The protesting vendor may appeal the decision of the County Administrator to the Board by filing a written petition of appeal with the County Administrator within 24 hours of the date of the decision, not including Saturdays, Sundays and County closings.
- d. The Board of County Commissioners shall review the petition at a public meeting within thirty (30) calendar days from the date of filing the appeal. The protesting vendor and the vendor who was recommended for award by the selection committee shall be provided reasonable notice of the time, date, and place of the public meeting by certified mail, return receipt requested, and invited to attend.
- e. Testimony at the public meeting shall be limited to ten (10) minutes per side, unless an extension of time is granted by the Board. Copies of the decision of the Board shall be distributed to the protesting vendor and any other party intervening.

12.3 STAY OF PROCUREMENT DURING PROTESTS

In the event of a timely protest, the County shall not proceed further with the solicitation or award of the contract pending resolution of the protest or determination by the Board of County Commissioners that award of the contract must be made without further delay in order to protect the substantial interests of the County.

SECTION 13 - PROFESSIONAL AND OTHER SERVICES

13.1 COMPETITIVE NEGOTIATIONS POLICY

Because price differences may only be a minor consideration compared to the quality of the professional's work, professional services are exempted from the County's quotation, Invitation to Bid or Request for Proposal policies. Instead, professional services will be acquired through competitive negotiations. The Professional Services procedure described below also ensures that the County complies with Section **287.055**, Florida Statutes, known as the Consultant's Competitive Negotiation Act (CCNA).

13.2 PROFESSIONAL SERVICES DEFINITION

A Professional Service is assistance obtained in support of County operations from a consultant in a professional field. Services in the following fields are considered Professional Services:

- a. Medical Services - medicine, psychiatry, dental, hospital, and other health professionals.
- b. Legal Services - attorneys, including bond counsel, title insurance and services, and other legal professionals or experts.
- c. Financial Services - rating and underwriting, financial advisor, investment related or other financial services.
- d. Appraisal Services - real and personal property appraisers.
- e. Audit and Accounting Services - auditors and accountants.
- f. Consultants - Planning, Management or Scientific Consultants.
- g. Professional Services Regulated by the CCNA, as may be amended from time to time, including those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the State of Florida, or those Professional Services performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her employment or practice.

13.3 AUTHORIZATION TO OBTAIN PROFESSIONAL SERVICES

- a. Legal Services - All requests for outside legal services shall be approved by the County Attorney within the amount budgeted for professional legal services by the Board.
- b. Auditor Services - All requests for Auditor Services will be referred to the Auditor Selection Committee established pursuant to Section 11.45, Florida Statutes, and as amended from time to time. Negotiations for such services shall be conducted as described therein.
- c. Financial Services - All requests for financial services to include rating and underwriting, financial advisor, investment related, and other financial services shall be approved by the Board.
- d. Authorization for obtaining the services listed below shall be approved by the County Administrator. The County Administrator is authorized to execute all professional services contracts listed below, for a total fee of \$50,000 or less. When the total fee is expected to exceed \$50,000, the County Administrator may require the user Department requesting the services to prepare an RFQ, RFP, utilize an existing continuing contract or seek Board approval of the recommended vendor(s).
 1. Appraisal Services - real and personal property appraisers

2. Consultants - Planning, Management or Scientific Consultants
 3. Medical Services – medicine, psychiatry, dental, hospital, and other health professionals.
- e. Authorization for requests for all CCNA professional services must be reviewed and approved by the Purchasing Manager. Selection of firms to provide these services must follow Section 287.055, Florida Statutes, known as the Consultant’s Competitive Negotiation Act (CCNA) and selection policy listed below.

13.4 CCNA PROFESSIONAL SERVICES

CCNA professional services shall be selected through the Request for Qualifications process. Per Florida Statutes, a continuing contract work authorization for CCNA professional services may be utilized if the total fee for a planning or study activity is \$200,000 or less or if the basic construction costs are not expected to exceed \$2,000,000. Continuing Contracts cannot be utilized for construction exceeding \$2,000,000.

- a. The RFQ shall be consistent with the requirements in Section 10 of this Manual.
- b. In addition, a statement that the proposer shall not include proposed compensation as part of the proposal, or that proposed compensation shall be provided in a separate sealed package. Such proposals for compensation will only be considered during competitive negotiations.

13.5 COMMUNITY DEVELOPMENT BLOCK GRANT (“CDBG”) PROFESSIONAL SERVICES PROCUREMENT PROCEDURE

The County shall adhere to federal regulations governing Community Development Block Grant (“CDBG”) funds, when obtaining professional services for CDBG.

13.6 OTHER SERVICES - SPECIALIST, VENDOR AND SPEAKER AGREEMENTS

- a. The County Administrator or designee is authorized to enter into agreements for other services through specialist, speaker, event vendor and exhibitor agreements. The form of the agreement shall be approved by the County Attorney. Limitations regarding signature authority apply to these agreements.
- b. Excluding services covered by the CCNA, specialist agreements may be utilized for projects or services that require a level of skill or knowledge that cannot be readily obtained through temporary hiring and/or funding of a permanent position is not required or feasible. Examples include project managers, grant writers, event planning or provision of recreational programs.
- c. Specialists are considered independent contractors. However, background screening will be conducted in accordance with County policy.
- d. Speaker agreements may be utilized for presentations to the general public, County-sponsored special events and related activities. Background screening is not required if staff will be present at all times and presentations are limited to a specific event or program.
- e. Vendor and exhibitor agreements may be utilized for County-sponsored events. Background screening is not required if staff will be present at all times and services are limited to a specific event or program.

SECTION 14 - MINORITY BUSINESS PARTICIPATION

All contractors are encouraged to assist Florida's small and minority businesses in doing business with the Board. Each contractor in assisting small and minority businesses will help to expand and develop the small and minority business sector of St. Lucie County.

14.1 DEFINITIONS

- a. "Certified Minority Business Enterprise" means a business enterprise which has been certified by the State of Florida Department of Management Services as a minority business enterprise in accordance with the provisions of the "Small and Minority Business Assistance Act of 1985".
- b. "Minority Business Enterprise" means any small business concern which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least fifty-one percent (51%) owned by minority persons, and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession.
- c. "Minority Person" means a lawful permanent resident of Florida who is:
 1. A Black American - a person having origins in any of the Black racial groups in Africa.
 2. A Hispanic-American - a person of Spanish or Portuguese culture, with origins in Mexico, South America, Central America, or the Caribbean, regardless of race.
 3. An Asian American - a person having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Island, including the Hawaiian Islands prior to 1778.
 4. A Native American - a person who having origins in any of the Indian Tribes of North America prior to 1835.
 5. An American woman.
- d. "Small Business" means an independently owned and operated business concern which employs fifty (50) or fewer full-time employees, and which has a net worth of not more than one million dollars (\$1,000,000). As applicable to sole proprietorships, the one million dollars (\$1,000,000) net worth requirement shall include both personal and business investments.

14.2 COUNTY SELECTION PROCEDURES

- a. The County shall make a good faith effort to provide interested minority business enterprises or minority persons with adequate information about the plans, specifications and requirements of contracts or the availability of jobs.
- b. The County shall make a good faith effort to effectively use services and resources of available minority community organizations, minority contractors' groups, local, state, and federal minority business assistance officers, and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons; and
- c. The County shall make a good faith effort to provide written notice to a reasonable number of minority business enterprises that their interest in contracting with the County is being solicited in sufficient time to allow the minority business enterprises to participate effectively.

14.3 MINORITY BUSINESS ENTERPRISE (MBE) DIRECTORY

The Minority Business Enterprise (MBE) Directory for the County shall be the vendors list of certified minority business enterprises prepared and maintained by the State of Florida Department of Management Services pursuant to Section 287.0943, Florida Statutes. In addition, any business which the Small Business Administration has identified as an 8(a) firm shall be eligible for listing in the Directory.

The purpose of this Directory is to enable the County's prime contractors to identify and utilize minority business enterprises.

SECTION 15 - VENDOR PERFORMANCE EVALUATIONS AND DEBARMENT

15.1 VENDOR EVALUATIONS

- a. The County Administrator shall provide written procedures for evaluation of vendor performance. Such evaluations shall be performed within 30 days of close out of the project by the project manager and Director or Manager of the user department. Evaluations shall be mandatory for all construction projects that are equal to or greater than \$250,000 and for all contracts greater than \$250,000, issued through RFPs or RFQs. At the Department Director's discretion, vendor evaluations may be completed at any time, regardless of amount, to document excellent or poor performance.
- b. The vendor shall be provided a copy of the evaluation and may submit a written statement concerning the evaluation. The vendor may request a meeting with the Director of the user department to discuss the content of the evaluation and any rating. The procedures shall also provide a process whereby the vendor may enter into an agreement with the County Administrator or designee for an opportunity to improve performance on future County projects.
- c. Prior evaluations within a five-year timeframe will be provided to selection committees or user departments when considering vendor/contractor performance for purposes of awarding a contract, bid or quote. The County reserves the right to review older evaluations if, in its sole discretion, the prior evaluations demonstrate a pattern of poor performance.

15.2 DEBARMENT

For the purposes of this policy, Debarment means that a vendor is prohibited from submitting quotations, bids or proposals to perform work for St. Lucie County.

- a. Cause for Debarment. The causes for Debarment include:
 1. Entry of a plea of guilty, no contest or nolo contendere to or conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in performance of such contract.
 2. Entry of a plea of guilty, no contest or nolo contendere or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, or receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a county contractor.
 3. Entry of a plea of guilty, no contest or nolo contendere or conviction under state or federal anti-trust statutes arising out of submission of bids or proposals.
 4. Material violation of any contract provision or as set forth below and which is regarded by the County Administrator as cause for Debarment, including but not limited to:
 - i. Failure without good cause to perform in accordance with specifications or within the time limits provided in the contract.
 - ii. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts within the previous three (3) years; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for Debarment.
 - iii. Refusal to enter into a contract with the County by failing to provide bonds, insurance, or other required certificates within the time periods as specified in bid/RFP response.
 - iv. Falsification of records related to contract performance, costs, payments or required documentation.

- v. Refusal to accept a purchase order, agreement, or contract, or to perform thereon, provided such order was issued timely and in conformance with the offer received.
 - vi. Presence of principals or corporate officers in the business or concern who were principals within another business at the time when the other business was suspended within the last three (3) years under the provisions of this section.
 - vii. Violation of the ethical standards set forth in state law.
 - viii. Providing anything of value, including but not limited to, a gift, loan, reward, promise of future employment, favor or service to any employee to influence the award of contract or purchase of items from a contract.
 - ix. Failure to timely pay subcontractors and vendors; and/or
5. Any other cause the County Administrator determines to be so serious and compelling as to affect the credibility or competence as a County vendor, including debarment by another government entity for any cause listed in this section.
- b. The Debarment shall be for a period of no less than one (1) and no more than three (3) years unless modified by the Board.
 - c. The County Administrator or designee shall notify the vendor of the intent to debar and the basis for the decision. Unless extended by the County Administrator in writing, the vendor shall have ten (10) calendar days from the date of the notice to provide the County Administrator with a response and reasons why the debarment should not proceed.
 - d. Within thirty (30) calendar days from the date of the response, the County Administrator shall render a final decision on the debarment of the vendor after consultation with the County Attorney. Nothing in this procedure shall preclude the County Administrator or designee from meeting with the vendor or user department regarding the debarment. Failure to file an appeal within the 30-day period shall constitute a waiver of that right and render the debarment decision conclusive.
 - e. An aggrieved party may appeal the debarment decision of the County Administrator to the Board. Such appeal shall be a hearing de novo. An appeal shall be filed within seven (7) days of the execution of the written decision by the County Administrator. The Board shall follow the appeal process set forth in Section 12.2 (d) and (e) of this Policy Manual.
 - f. The Board's decision to debar a person or business shall be final and conclusive unless a timely appeal of the Board's decision is filed pursuant to the Florida Rules of Appellate Procedure.
 - g. Reinstatement. A person or corporation may be reinstated to do business with the County under the following conditions:
 - 1. Discovery of new and material evidence not previously available.
 - 2. Dismissal of indictment or reversal of condition.
 - 3. Bona fide change in ownership or management sufficient to justify a finding of present responsibility
 - h. The request for reinstatement shall be forwarded in writing to the County Administrator or designee. The County Administrator shall render the decision in writing within thirty (30) days from the receipt of the request for reinstatement.
 - i. An appeal of the County Administrator's decision to the Board must be filed within thirty (30) days of the execution of the written decision by the County Administrator. The Board's decision to reinstate

or not reinstate a person or business shall be final and conclusive, unless a timely appeal of the Board's decision is filed pursuant to the Florida Rules of Appellate Procedure.

SECTION 16 - PROCUREMENT PROCEDURES FOR STATE OR FEDERALLY FUNDED GRANT PROGRAMS

16.1 APPLICATIONS

The County Administrator shall approve all applications for state, federal and other grants after confirming that matching funds, if required, are available and reserved. The County's ability to fund any ongoing costs of a potential grant, including personnel, operating and maintenance, shall be considered as early as possible in the application process but no later than prior to acceptance of an award.

16.2 ACCEPTANCE

Upon notice of grant award, the County Administrator or designee shall submit the grant to the Board for acceptance and for approval of the associated budget resolution if required. Confirmation of the availability of matching funds and the County's ability to fund maintenance, operational and other ongoing costs (if any) shall be provided to the Board.

The County Administrator will develop written administrative procedures for the acceptance and distribution of grant funds. Administrative procedures for the acceptance and distribution of grant funds will be located on the Office of Management and Budget intranet site.

16.3 PROCUREMENT

The Board recognizes that certain procurement requirements for state or federally funded grant programs may, from time to time, conflict with standard St. Lucie County policies. The County Administrator, therefore, is authorized to modify County procurement policies to comply with procurement requirements for state or federally funded grant programs.

All procurement funded by Community Development Block Grants shall follow the Procurement Policies and Procedures for Community Development Block Grant Programs and Projects included as Attachment A of the St. Lucie County Purchasing Manual.

All procurement funded by Federal Transit Administration ("FTA") Grants shall follow the FTA Purchasing Guidelines included as Attachment B of the St. Lucie County Purchasing Manual.

All procurements funded by the Federal Emergency Management Administration ("FEMA") shall be subject to 2 C.F.R. Section 200.236 and 2 C.R. R Part 200, Appendix II, Required Contract Clauses included as Attachment C of the St. Lucie County Purchasing Manual.

SECTION 17 – CONTRACT PROCEDURE

17.1 CONTRACT REQUIREMENTS

For purchasing purposes, a contract is a formal written agreement between the Board and a selected vendor, consultant, or contractor for a particular purchase.

- a. A contract is required for:
 1. Professional services as described in Section 12
 2. All construction projects as described in Section 18
 3. Purchase, sale or lease of County-owned property or purchase, sale, or lease of property by the County. Unless otherwise required by the County Attorney, the approved Facility Use Agreement is the acceptable form for short-term use of County facilities.
 4. All services which are to be performed on property owned or controlled by St. Lucie County or performed on behalf of the County on property not owned by the County.
- b. Unless required by the County Administrator, County Attorney or Purchasing, a purchase order shall serve as the contract for services of \$25,000 or less.
- c. A contract may be required for any other purchase, if deemed necessary by the County Administrator, the County Attorney, the Board or Purchasing.
- d. A contract may be entered into if required by the vendor.
- e. Unless specifically required by the Board, County Administrator, or County Attorney, purchases of goods or equipment which do not include any associated services, such as installation, do not require a contract apart from the purchase order.
- f. Upon approval by the County Attorney, liquidated/delay damages may be incorporated into Professional Services contracts.

17.2 CONTRACT PREPARATION

Unless prepared by the vendor, or as provided for below, all required contracts will be prepared under the direction of the County Attorney. If a contract is prepared by the vendor, the contract must be submitted to the County Attorney for review and approval. The County's Risk Manager should be consulted to ensure that the proper insurance requirements are included in the contract documents.

- a. Service contracts of \$25,000 or less
 1. Unless otherwise required by the County Attorney, County Administrator or Purchasing, a purchase order for services shall serve as the contract between the County and the vendor for services costing \$25,000 or less. At a minimum, all purchase orders must contain the following terms and conditions as they may be amended by the County Attorney.
 - i. A statement in conspicuous print which provides that the purchase order is subject to all of the terms and conditions and that the vendor, by acceptance of the purchase order, agrees to be bound by and abide by all of the terms and conditions of the purchase order.
 - ii. A condition that provides a warranty by the vendor.
 - iii. A condition that the vendor agrees to indemnify the County for any liability arising out of the service provided under the purchase order and a condition that the vendor will maintain insurance sufficient to protect the interests of the County. The amounts and types of

insurance shall be provided by the County Risk Manager. No work shall be performed under the purchase order until the vendor has provided proof of insurance to the County.

17.3 CONTRACT AMENDMENTS

- a. If it becomes necessary to amend the terms of the contract, a formal, written contract amendment must be prepared.
- b. The County Administrator is authorized to approve contract, grant, or other agreement amendments up to a cumulative total of \$50,000 or less following written confirmation by the user department that additional funds are available. Once the cumulative total of \$50,000 is exceeded, all subsequent amendments must go before the Board for approval.
- c. The County Administrator is authorized to approve contract, grant, or agreement amendments for time extensions.

SECTION 18 - CONTINUING CONTRACTS AND WORK AUTHORIZATIONS

18.1 CONTINUING CONTRACTS

- a. Per Florida Statute 287.055, continuing contracts may only be utilized for professional services in which construction will not exceed \$2,000,000 and for studies which will not exceed \$200,000 or when it is for work of a specified nature as set forth in the continuing contract.
- b. Requests for Qualifications or Requests for Proposals for continuing services contracts shall be reissued every three to five years unless waived by the Board.

18.2 WORK AUTHORIZATIONS

- a. Work authorizations shall be required for all continuing services contracts as determined by specific contract language. All work authorizations shall be approved and signed by the appropriate signing authority.
- b. All work authorizations for more than \$50,000 will be prepared under the direction of the County Attorney and approved and executed by the Board.

18.3 AMENDMENTS TO WORK AUTHORIZATIONS

- a. If it becomes necessary to amend the terms of the work authorization, a formal, written amendment must be prepared. The County Administrator may approve amendments to work authorizations for a cumulative total of \$50,000 or less. Once the cumulative total of \$50,000 is exceeded, all subsequent amendments must go before the Board for approval.
- b. The County Administrator may also approve time extension amendments to work authorizations.

SECTION 19 - CONSTRUCTION CONTRACTS

19.1 CONSTRUCTION CONTRACTS AND AMENDMENTS

- a. Construction contracts shall comply with all Board policies for contracts with additional appropriate conditions as approved by the County Attorney. Per F.S. 255.20, construction contracts are to be utilized when a public entity contracts to construct or improve a public building, structure or other public construction works.
- b. Change orders are utilized to amend construction contracts when only time and/or price is involved. All other amendments to construction contracts must be accomplished through a contract amendment and approved by the original signing authority. For purposes of contract amendments, scope of work for construction contracts generally is defined to include any work that is required to construct the project.
- c. Construction contracts will be awarded only to a contractor who is certified or licensed by the County and/or State, as appropriate, and has provided proof of insurance in amounts satisfactory to the County.
- d. Except as provided in (e), the County Administrator is authorized to approve change orders or contract amendments up to cumulative total of \$50,000. Once the cumulative total of \$50,000 is exceeded, all subsequent amendments must go before the Board for approval.
- e. Construction contracts may include a project contingency up to 10% of the contract amount. Use of funds from the project contingency shall be approved by the Project Manager. When the cumulative total of change orders or contract amendments exceeds the contract contingency, additional change orders or contract amendments, other than time extensions, must be approved by the Board.
- f. The County Administrator is authorized to approve time extensions.
- g. In case of emergency and/or when a delay will result in potential work stoppage or additional costs to the County as a result of the delay, the Director may seek approval from the County Administrator to proceed with the work. If Board approval of the change order or contract amendment is required, it may be processed after-the-fact at the next available Board meeting.

19.2 APPRENTICESHIP PROGRAM REQUIREMENTS

Contractors shall be required to comply with the County's Apprenticeship Program, as follows:

- a. On County-funded construction projects which exceed \$300,000, twenty percent (20%) of laborers working in a specialty for which there are apprentice programs registered with the County shall be apprentices. Such apprentices shall be students in certified State of Florida Pre-Apprenticeship/Apprenticeship Programs which are located in St. Lucie, Martin, Indian River or Okeechobee Counties and which are registered with the County.
- b. A County-registered apprenticeship program is one which has registered with the County and provided the required documentation, including but not limited to, proof of certification as an apprenticeship program with the State of Florida and proof of having educational facilities physically located in St. Lucie, Martin, Indian River or Okeechobee Counties.
- c. Unless the apprenticeship requirement is waived by the County, the failure of the Contractor to demonstrate compliance with this requirement shall result in the Contractor's bid being deemed nonresponsive.

- d. The apprentice requirement may be waived or modified with the recommendation of the County Administrator, and appeal to the Board of County Commissioners:
 - 1. Upon request of the contractor, if the contractor can demonstrate that the required apprentices are not available despite a good faith effort on the contractor's part; or
 - 2. Upon request of the contractor, if the contractor demonstrates that the available apprentices are not sufficient to meet the required 20% and the contractor commits to utilizing a specific percentage of apprentices who are available; or
 - 3. if the County determines it is in the best interests of the County to waive such requirement based on potential savings of money and time or grant requirements.
- e. The agreed upon percentage and type of apprentices will be included as a requirement of the construction contract. Failure to meet the terms of the apprenticeship requirement may result in the contractor being found in breach of the contract and subject to possible monetary sanctions.

19.3 BONDING AND INSURANCE REQUIREMENTS

Public Construction Bond

- a. Section 255.05, Florida Statutes, provides that any person entering into a formal contract with the Board for the construction or repair of any public building or public work shall be required to execute the usual Penal Bond with good and sufficient sureties. Section 255.05, Florida Statutes, further provides that the Board, in its discretion, may exempt any person entering into a contract that is for \$200,000 or less from executing the usual penal bonds for construction and repair on public buildings and public work.
- b. The Board has determined to not require a public construction bond for projects under \$100,000 unless deemed necessary by the County Administrator or designee. Requests for waiver of the bond requirements from \$100,000 up to \$200,000 shall be reviewed and approved by the County Administrator on a case-by-case basis.

General Insurance Requirements

- a. The contractor shall be required to purchase and maintain such insurance as will protect him or her from claims set forth below that may arise out of or resulting from the contractor's operations under the contract, whether such operations be by the contractor or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable for:
 - 1. Claims under Workers' or Workmen's Compensation, Disability Benefit, and other similar employee benefit acts.
 - 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the contractor's employees.
 - 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the contractor's employees.
 - 4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the contractor, or (2) by any other person.

5. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and;
 6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- b. The insurance required shall be written for not less than any limit of liability specified in the contract documents, or required by law, whichever is greater. The insurance required shall include contractual liability insurance applicable to the contractor's obligations.
 - c. The contractor shall purchase and maintain property insurance upon the entire work at the site to the full insurable value (replacement cost). This insurance shall include the interest of the County, the contractor, subcontractors, and sub subcontractors in the work and shall be insured following the Basic Causes of Loss form and shall include "all risk" insurance for physical loss and damage including, without duplication of coverage, theft, vandalism, and malicious mischief. If the County is damaged by failure of the contractor to purchase or maintain such insurance and to so notify the County, then the contractor shall bear all reasonable costs properly attributable thereto. If not covered under all risk insurance or otherwise provided in the contract documents, the contractor shall effect and maintain similar property insurance on portions of the work stored off the site or in transit when such portions of the work are to be included in an application for payment.
 - d. The contractor shall file with the County certificates of insurance acceptable to the County prior to commencing the work. If the contract exceeds \$50,000, the certificate shall name St. Lucie County, its officers and employees as additional insured with respect to the work performed under the contract. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the County.

19.4 RETAINAGE FOR CONSTRUCTION CONTRACTS

- a. Retainage for construction contracts shall be governed by F.S. 218.70, known as the Local Government Prompt Payment Act, as it may be amended, which contains specific language regarding the timing and conditions under which retainage must be released.

19.5 CLOSE OUT OF CONSTRUCTION CONTRACTS

- a. Construction contract projects other than public roads will be closed out after a Certificate of Occupancy has been issued (if applicable), certification by an architect or engineer that construction has been completed in accordance with the construction plans and specifications and acceptance by the County project manager. At the discretion of the project manager, the contractor may be required to provide consent of surety before any progress payment, including the final payment.
- b. Construction contracts for public road projects shall be considered complete upon acceptance by the Board and certification by an engineer that construction has been completed in accordance with construction plans and specifications. Such acceptance shall provide for release of construction retainage. At the discretion of the project manager, the contractor may be required to provide consent of surety before any progress payment, including the final payment.
- c. Final payment and release of retainage shall not occur until close out has been completed and all liens have been released.

SECTION 20 - EMERGENCY PURCHASES

20.1 EMERGENCY PURCHASE POLICY

Although competitive bidding is desirable for most purchases, when an Emergency arises, the normal procedure is too time consuming. For this reason, the County has adopted an Emergency Purchases Procedure.

20.2 DEFINITION OF AN EMERGENCY

For purchasing purposes, an Emergency is defined as: an unforeseen situation involving a breakdown of County service and an urgent need to restore that service to avoid serious and adverse consequences affecting the life, health, welfare, or property of the citizens of St. Lucie County.

20.3 EMERGENCY PURCHASE AUTHORIZATION

Emergency Purchases are authorized when there is an Emergency, and there is an immediate need for items or services to deal with the Emergency.

- a. In an Emergency situation, the County Administrator may authorize an Emergency Purchase and waive any bid requirement.
- b. If the Emergency occurs at night, on weekends, or on holidays, the Department Director may initiate independent action as provided below.

20.4 EMERGENCY PURCHASE OVER AUTHORIZATION LIMIT

The Department Director must attempt to obtain the authorization of the County Administrator or designee for emergency purchases which exceed the Director's authorization limit.

- a. After attempting to obtain authorization from the County Administrator or designee, the Department Director may make the purchases of the needed items or services.
- b. If the Department Director was unable to obtain prior authorization, the Department Director will obtain from the County Administrator or designee "after the fact" approval of the purchase on the next working day.
- c. If the emergency purchase exceeds the County Administrator's authorization limit, the County Administrator will request "after the fact" approval from the Board of County Commissioners at its next regular scheduled meeting.

SECTION 21- TRAVEL AND EDUCATIONAL EXPENSES

Section 21 – Travel and Educational Expenses was removed from the Purchasing Policy Manual and added to the St. Lucie County Employee Manual. (August 13, 2019)

SECTION 22 - MISCELLANEOUS OBLIGATIONS

22.1 MISCELLANEOUS TRANSACTIONS

It is recognized that there are certain transactions which are unique in nature, and therefore, cannot be handled through processes described in the Manual. These transactions shall be referred to as miscellaneous obligations, including but not limited to those listed below. Procedures for these transactions will be established by the County Administrator, in coordination with the Finance Director and the County Attorney:

- a. The acquisition of real property, such as land, easements, rights-of-way, existing buildings, or improvements, resulting from negotiations and approved by the Board.
- b. The payment of court-ordered fines and judgments, resulting from litigation, to which the County is a party.
- c. The payment of fines to state and federal agencies which the County Attorney and County Administrator have determined to be the responsibility of the County.
- d. Any exceptional disbursement as authorized by the Board of County Commissioners.
- e. The payment of court-ordered fees, resulting from the judicial process, processed by the Clerk of the Court, and recorded against the budget for fees. For such fees, the County is only the public taxing agency responsible for supporting the judicial system.
- f. Cash transfers and investment transactions for fiscal management purposes, processed through the Finance Department, and against general ledger accounts.
- g. The payment of accrued or current liabilities already charged against the budget, approved by OMB, processed through the Finance Department, and recorded against general ledger accounts.
- h. Debt service payments approved by OMB, processed by the Finance Department and charged against budgetary accounts.
- i. Refunds of current or prior year revenues charged against budgetary accounts.
- j. Grant disbursements to federal, state, or local government agencies, or to private groups or agencies.
- k. Disbursements to County Officers of funds budgeted for their requisition and use.
- l. Inter-fund or interdepartmental transfers or reimbursements within or among County Departments.
- m. Aid disbursements for JPTA participants, housing and rental subsidies, hospital indigent payments or other welfare and medical assistance.
- n. Payments for insurance including, but not limited to, liability, property, medical and workers compensation insurance or payments from any loss fund established for such purpose.
- o. Payments for utilities, advertising, toll charges and postage.
- p. Payments made to an outside or other governmental agencies pursuant to an interlocal agreement.

SECTION 23 - CAPITAL ASSETS

23.1 COUNTY OWNED PERSONAL PROPERTY

Any equipment not incorporated into a facility, purchased with an individual value of \$1000 or more (or as established by Rule of the Chief Financial Officer, Rule 69I-73.002) and having a projected useful life of one (1) year or more, is considered Tangible Personal Property. All land, buildings, and improvements are considered real property. Both Tangible Personal Property and real property are considered capital assets.

23.2 ACQUISITION OF CAPITAL ASSETS

- a. The Department Director should include the purchase of capital assets during the annual budget preparation.
- b. If the capital asset increases in cost after budget approval by the Board, the County Administrator or designee shall have the authority to approve the purchase, if funds are available, up to \$50,000.
- c. Requests for capital assets not included in the budget process must be approved by the County Administrator. The requesting Department Director must provide a justification and identify available funding in the department budget. If approved by the County Administrator, proposed purchase of capital assets greater than \$50,000 must be approved by the Board.
- d. If a non-capital maintenance improvement project is approved in the budget process by the Board but is later deemed to be a capital improvement, the County Administrator shall have the authority to approve the budget transfer without additional Board approval.
- e. A physical inventory of all Tangible Personal Property will be conducted and updated annually, and surplus property disposed of in accordance with current state laws. Real property will be inventoried as outlined in procedures established by the Finance Department.
- f. Donated property with a value of \$1,000 or more, based on its current market value, will be included in the requirements of this section.

23.3 DISPOSITION OF CAPITAL ASSETS

The disposition of capital assets shall be in accordance with Section 274.06, Florida Statutes. The County Administrator may transfer assets that have been declared surplus to a local nonprofit organization or governmental entity without competitive bidding.

23.4 HARDWARE/SOFTWARE

The Chief Information Officer or designee is responsible for all County computer and telephone equipment, software, computer security, data and voice circuits, and has final decision-making authority over all computer-related purchases in accordance with signature authority.

SECTION 24 – FUNDRAISING AND SPONSORSHIP POLICY

PURPOSE:

To encourage and support departments in the development of partnerships to aid in revenue generation and Fundraising and Sponsorship efforts that are consistent with existing County policies, procedures and applicable laws.

BACKGROUND:

With a long-standing tradition of creative and innovative solutions that sustains ongoing services for our residents; the County continues to look for ways in which Public-Private Partnerships provide Donations, funding and volunteer assistance to support and enhance County services.

POLICY:

Individual Departments, through the approval of the County Administrator and/or the Board of County Commissioners, may develop Sponsorship and Fundraising programs that meet the requirements set forth in this Policy.

GENERAL PROVISIONS:

1. This policy is intended to establish a framework if County Departments and the County Administrator determine to establish Donations, Sponsorship, and Fundraising programs so that the Departments may properly consider and address the different economic, procedural and legal issues that may be associated with Donation and Sponsor solicitation and recognition, including those related to County related foundations.
2. This policy is intended to support the County's ability to increase revenue and partnership and does not limit the County's ability to apply for grant funding.
3. The County will consider the acceptance of Donations or Sponsorships if the Donation or Sponsorship provides a significant enhancement to the County, enhances or reduces cost the County would incur in the absence of its acceptance, or if it otherwise benefits the County in a manner that provides a net savings to the County.
4. The County will consider Donations of materials with the understanding that such items have a useful life. Once a Donation is accepted, it becomes County property and the County reserves the right to decide to maintain, replace or dispose of the item unless the Donation is explicitly accepted by the County subject to restrictions.
5. Unrestricted Donations are preferable to restricted Donations.
6. Definitions of terms used in this policy are set forth below:

DEFINITIONS:

- **Fundraising:** Any activity conducted with the intent of soliciting Donations, Sponsorships, or other financial contributions to the County or to a particular Department or activity of the County. Fundraising activities may include, but are not limited to, contacting individuals, companies, foundations, or other entities with the primary purpose of receiving financial support for the County.
- **Sponsorship:** A "Sponsorship" typically means a person or entity that provides that County with financial support for an activity, County program or County facility, typically in exchange for the County providing more than nominal recognition of its financial support, which distinguishes a Sponsorship from a Donation. Financial assistance provided by a Sponsor may consist of cash and/or in-kind contributions.

- Donation: A Donation to the County means a person or entity providing the County with financial support or property of a value exceeding the County's payment for such item. A Donation may consist of cash, real property (land) or an in-kind Donation. Donations may be unrestricted or restricted by the Donor.
- In-Kind Contributions: A contribution of an item or object other than cash or real property, which would serve a useful purpose in the provision of County services. Examples of in-kind contributions may include equipment, materials or services.
- Donor: A company, organization or individual who provides the County, or one of the County departments, an item or service without expectation of significant return or recognition as determined by the County.
- Restricted Donation: A Donation made to the County where the Donor has restricted its use to a specified purpose.
- Sponsor: A company, organization or individual who provide the County with funding support for a program, activity or facility in the form of a Sponsorship, and who expects recognition in return.
- Sponsorship Agreement: A negotiated agreement between the County and a company, organization or individual whereby the County makes a Sponsorship opportunity available and enters into an agreement with a company, organization or individual to pay a fee in cash, products, services, or a combination thereof, for recognition rights related to certain identified County owned commercial or marketable assets. A Sponsorship Agreement may permit a limited form of advertising opportunity for a company, organization or individual in exchange for the fee paid to the County, subject to the terms of this Policy and subject to the approval of the County Administrator and the County Attorney.
- Unrestricted Donations: A Donation made to the County where the Donor has placed no limitation on its use.
- Works of Art: Includes, but is not limited to, physical art that may be an integral part of a public site or building, or that may be integrated with the work of other design professionals. Examples of public works of art include sculptures, murals and paintings, earthworks, neon, glass, organic materials, mosaics, photographs, prints, film, any combination of media forma, or hybrids of any media.

AUTHORITY:

1. The Director of each Department shall submit to the County Administrator for approval, written Sponsorship, Donation, and/or Fundraising programs to be implemented by Departmental staff.
2. The County Administrator is hereby authorized to approve Sponsorship, Donation and/or Fundraising programs and to issue requests for proposals to engage in similar Donation or Sponsorship solicitation activity. Board of County Commissioners approval is required if any of the following conditions are met:
 - a. A proposed Donation or Sponsorship is of value or term in excess of \$50,000.00 (including a fair market valuation of in-kind contributions);
 - b. A proposed Grant of any Donor or Sponsorship recognition rights has a value in excess of \$50,000.00; or
 - c. Agreement to name any County property after any individual or entity.

3. The County Administrator may delegate authority to the Department Director to approve a Department's Sponsorship, Donation and/or Fundraising program which delegation may not exceed \$50,000.00 unless also approved by the Board of County Commissioners.

COUNTY RELATED FOUNDATIONS:

County related foundations may only be created to facilitate additional County services and resources through Public-Private Partnerships. The boards of the foundations should be developed by recruiting directors with specific expertise, business connections and fundraising ability. This section is intended to provide guidance to staff to evaluate whether to accept Donations, grants, or other forms of financial or in-kind assistance provided by County related foundations in light of any actual or potential conflict of interest and the appearance of a conflict of interest.

Guidelines:

1. County related foundations should develop their Donation, Sponsorship, and/or Fundraising policies in consultation with the beneficiary County Department(s) and the County Attorney's Office in order to avoid any actual or potential conflict of interest or the appearance of a conflict of interest under State law.

County staff shall ensure that any County related foundations develop conflict of interest policies that are timely and conform to the guidelines as set forth below for development of new Donation, Sponsorship, and/or Fundraising policies for County related foundations.

2. Directors or designees of County Departments that receive assistance from a County related foundation shall conduct, at a minimum, an annual review of the following:
 - a. The membership of the foundation's board to determine whether the addition of a particular person on the board raises an actual or perceived conflict.
 - b. Annual signed statements from each foundation board member and principal officer affirming that such person has received, read, understands and agrees to comply with the conflict-of-interest policy; and
 - c. The foundation's current conflict of interest policy to determine if any material change has been made to the policy that may affect the decision to accept funding or any other benefit from the County related foundation.
3. At a minimum, new Donation, Sponsorship, and/or Fundraising policies developed for County related foundations should set forth the following elements relating to conflict of interest:
 - a. The purpose of the policy.
 - b. Procedures relating to the duty and opportunity of a member of the board or employee to disclose an actual or possible conflict of interest, how the board will determine whether a conflict of interest exists, how a conflict of interest will be addressed, and how violations of the conflict-of-interest policy will be addressed.
 - c. Annual signed statements from each foundation board member and principal officer affirming that such person has received, read, understands, and agrees to comply with the conflict-of-interest policy; and
 - d. Periodic reviews by the board of the County related foundation and/or outside advisors regarding whether the foundation's written policies, are properly recorded, reflect reasonable investment or payment for goods or services, further charitable purposes and do not result in an impermissible private benefit or excess benefit transaction.

DEPARTMENT PROCESS:

Guidelines:

1. Individual departments shall develop their Donation, Sponsorship, and/or Fundraising programs in consultation with the County Attorney's Office and which shall be approved by the County Administrator. In its simplest form, a department program may consist of a memorandum to the County Administrator indicating the following:
 - a. Goal of the sponsorship, donation, and/or fundraising activities.
 - b. Timeframe for the program.
 - c. Target audience and method of outreach; and
 - d. Procedure for acceptance and reporting of activities, ensuring internal controls.
2. Where a more elaborate plan is needed, a department program may set forth:
 - a. The types of Donors or Sponsor recognition that is available for specified value of Donorship or Sponsorship, subject to Board of County Commissioners approval if the value of recognition is more than \$50,000.00.
 - b. Specified or maximum sizes and identification of location(s) of any signage in recognition of the Donation or Sponsorship and any restrictions on the text of the recognition signage.
3. The Department staff designated to oversee the Department's Donation, Sponsorship, and/or Fundraising activities will ensure that the proposed Donation, Sponsorship, and/or Fundraising program does not conflict with State law or County policy. Department staff shall also ensure that the County property involved is not subject to restrictions that would limit or prohibit the proposed Donation or Sponsorship.
4. The Department staff accepting items donated to the County will ensure that the items are safe and durable, and meet any applicable County design or quality specifications, standards, and policies.
5. Where applicable, the Department's Donation, Sponsorship, and/or Fundraising program shall set forth the conditions for acceptance of funds. Conditions shall be fair, impartial and shall not discriminate on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or political views of the proposed Donor.
6. Any Department considering acceptance of a Donation or Sponsorship that may impact or affect other Departments shall consult with those Departments prior to acceptance of the proposed Donation or Sponsorship.
7. It shall be the goal of any Departmental Donation, Sponsorship, and/or Fundraising program to find Donors or Sponsors providing a new benefit to the County along with consideration of the quality of product or service to be received by the County.
8. All Donations in cash shall be deposited and recorded with the County Finance Department.
9. Unaccepted Donations will be returned to the Donor.

Sponsorship Agreements:

After the selection of a Sponsor, as appropriate, the terms of the Sponsorship, including any expectation of a significant return or recognition, shall be set forth in a written Sponsorship Agreement approved as to form by the County Attorney.

Costs, Accounting and Record Keeping:

Departments shall maintain records that provide an audit trail for the receipt of all Sponsorships and Donations. Departments shall also comply with the following requirements:

1. All Donations and Sponsorships and the revenue, products, and services received shall be recorded and maintained for at least the expected life of the item or service, or for a specific timeframe that has been established in the Donation Agreement or Sponsorship Agreement.
2. Donations or Sponsorships paid for with a monetary contribution shall not be paid to staff in cash unless approved, in advance, by the Department Director and receipt of cash is properly documented.
3. A record of all Sponsorships and Donations including name, type, contact name if a company, amount, and disposition of Sponsorship shall be kept up-to-date and accurate.
4. Departments shall report any Donations or Sponsorships received by the Department through reports to County Administrator.

OTHER DONATIONS OR CONTRIBUTIONS:

1. Real Property Contributions.
 - a. Restricted Donations of real property may be offered to the County for specific purposes. The County's Property Acquisitions Manager will review the conditions of the restrictive Donations of real property and determine if the benefits to be derived warrant the acceptance of the Donation. All Donations of title to real estate, no matter how small, require Board of County Commissioners approval after proper investigation and due diligence is conducted by County staff.
2. Works of Art Contributions.
 - a. If a contribution is proposed related to a work of public art covered by the County's Art in Public Places ordinance, the County's review and acceptance of the proposed contribution of public art shall be conducted in accordance with the County's Art in Public Places ordinance, which shall include the review and recommendation of the St. Lucie County Local Arts Agency and compliance with any policies adopted regarding donations of works of public art. Any time a Donation of a work of art or a contribution towards the acquisition of a work of art that would not ordinarily be covered by the County's Art in Public Places ordinance is proposed for the County, the County Department that operates or maintains the site of the proposed work of art shall submit the proposed Donation to the St. Lucie County Local Arts Agency for the Agency's recommendation regarding acceptance of the proposed Donation of public art.

DISCLAIMERS:

1. Different forms of contributions to the County present different opportunities and challenges. Therefore, it is not possible to establish blanket guidelines to cover all types of Donations or Sponsorship activity that the County may decide to pursue.
2. Unless expressly stated otherwise, the County does not intend to modify or change the non-public forum status of any County property by providing Donor recognition or Sponsorship recognition on County property.

3. The making of a Donation or Sponsorship to the County will not provide any extra consideration to the Donating or Sponsoring party in relation to any County procurement, any regulatory activities of the County, or other County business. No County employee or other County Official is authorized to offer any such extra consideration to a donating party.
4. Any Donation or Sponsorship which, if accepted, would obligate the County to enter into a service or procurement agreement should be reviewed under the County's Purchasing Manual.
5. The County will consider Donations of materials with the understanding that such items have a useful life, and that the County assumes no responsibility for replacement or upkeep. Once a Donation is accepted, it becomes County property and the County may maintain, replace or dispose of the item unless the Donation is explicitly restricted.
6. The County cannot guarantee the tax deductibility of a Donation but may provide the donating party with a letter of acknowledgement and a statement of the County's intended use.
7. The County shall maintain the highest standard of ethics in Fundraising activities. All Donations or Sponsorships must directly enhance the County's ability to provide goods or services to the public or for another valid public purpose and may not be used for personal financial gain of any County employee.
8. County employees who have primary responsibility for the procurement of services, supplies, materials and equipment or public works should not engage in solicitation of Donations or Sponsorships.
9. County employees may only solicit Donations or Sponsorships pursuant to the individual Department's Donation, Sponsorship, and/or Fundraising programs approved by the County Administrator. County employees working in an enforcement or regulatory County position (i.e. Code Enforcement and Environmental Services) shall not solicit Donations or Sponsorships from the public while they are wearing a County uniform.
10. At any time, a department, if approved by the County Administrator, or the County Administrator may reject any Donation or Sponsorship offered to the County.

Attachment A



Community Development Block Grant Programs and Projects Procurement Policies and Procedures

TABLE OF CONTENTS

- I. General Policy
 - A. Applicability
 - B. Procurement Law and Regulations
- II. Procurement Standards
 - A. General Standards
 - B. Competition
- III. Procurement Administration
 - A. Efficiency Review
 - B. Performance Review
 - C. Records
 - D. Written Agreements
 - E. Authorizations
- IV. Procurement Classifications
 - A. Simple
 - B. Intermediate
 - C. Formal
- V. Solicitation and Award
 - A. Invitations for Bids
 - B. Request for Proposals (RFP)
 - C. Advertising
 - D. Evaluation
 - E. Multiple Service Awards
- VI. Exceptions
- VII. Affirmative Action/Equal Opportunity
- VIII. Contracts
- IX. Code of Conduct
- X. Protests

I. GENERAL POLICY

A. APPLICABILITY

These procurement policies establish procedures and guidelines that shall be used for the purchase or procurement of personal property, supplies, equipment, and services for CDBG and other federally funded grants and awards.

All procurement shall be accomplished in compliance with applicable state and federal law. The purpose of these procedures is to facilitate the determination of the most efficient and economical means of securing commodities and services without sacrificing necessary control and good purchasing practice.

B. PROCUREMENT LAW AND REGULATIONS

Laws relative to the procurement process, in general, may be found in Chapter 287, Fla. Statutes. The provisions of these procurement procedures shall not be construed to conflict with or supersede the requirements of S. 287.055, Fla. Statutes, 2 CFR Part 200, or any other applicable state or federal laws or regulations. Future state or federal regulations applicable to procurement under the CDBG Program shall supersede and/or supplement this policy.

II. PROCUREMENT STANDARDS

A. GENERAL STANDARDS

Except as otherwise provided by law, procurement awards shall be made only based on requirements and evaluation factors that are directly related to the price, quantity, or quality of the commodities or services or the ability of the prospective supplier or contractor to perform under the agreement.

Procurement procedures prohibit the dividing of the procurement of a good or service into a number of smaller groups to avoid the more stringent requirements of a higher dollar. In addition, the use of cost-plus percentage of construction cost methods is prohibited. The sub grantee shall follow the provision of 2 CFR Part 200; the sub grantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are offered the opportunity to participate to the maximum practicable extent shall be adhered to.

B. COMPETITION

All procurement transactions will be conducted in a manner providing full and open competition consistent with standards of 2 CFR Part 200.318 through 200.327. Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive awards to consultants that are on retainer contracts.
5. Organizational conflicts of interest.
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered, and;
7. Any arbitrary action in the procurement process.

The inability to obtain more than one bid, price quote or proposal shall not prohibit the approval of a purchase if other prospective vendors or contractors have been given adequate notice of the procurement and an opportunity to participate, and have declined to submit bids, proposals or price quotes. The County

may accept one bid as long as it has met all CDBG procurement requirements and procedures. The declaration to submit need not be in writing.

The use of a cost-plus percentage of cost and percentage of construction cost methods is prohibited in all CDBG procurement.

III. PROCUREMENT ADMINISTRATION

A. EFFICIENCY REVIEW

The Community Services Director, other authorized representative or employee who approves each purchase shall review the proposed procurement to avoid unnecessary or duplicative items. In order to obtain a more economical, efficient or effective purchase, consideration shall be given to:

1. Breaking out or consolidating purchases,
2. Lease versus purchase alternatives,
3. Interlocal agreements for purchases or use of common goods,
4. Use of federal or state surplus property,
5. Value engineering reviews, and
6. Use of state or federal contracts for materials and/or services.

B. PERFORMANCE REVIEW

Contracts shall specify a contract manager, appointed by the local governing body, to ensure that the contractor performs in accordance with the terms, conditions and specifications of their contract or purchase order.

C. RECORDS

Appropriate arrangements shall be made for the generation and maintenance of all files, records, and documentation necessary to evidence the compliance with all requirements as delineated in this document. All procurement shall comply with good purchasing practices and with applicable local, state and federal regulations, in a manner consistent with this document. A complete set of records shall be maintained by the entity responsible for the procurement for a minimum of 6 years.

D. WRITTEN AGREEMENTS

Any formally bid procurement of commodities or services shall be evidenced by a written solicitation embodying all provisions and conditions of the procurement. This requirement for written documentation may be met through preparation of a letter on municipality or vendor letterhead, signed by the vendor and appropriate elected and/or appointed official, stating such conditions and terms as price, number of units of purchase (e.g., ea., cs., bx., etc.) or product, delivery date, or when service is to begin, point of delivery, specifications, etc. Any price quotes, warranties, guaranties, certifications, or contracts shall be attached and filed.

E. AUTHORIZATIONS

Purchase orders or contracts shall be issued for all purchases and must be signed by either the Board of County Commissioners, the Director of Management and Budget or the Department Director approving the purchase. The local governing body must authorize all purchases more than \$50,000.

IV. PROCUREMENT CLASSIFICATIONS

The following classifications are established:

PROCUREMENT CLASS	PROCUREMENT RANGE	DESCRIPTION	PROCUREMENT METHOD
1.	\$ 1- 5,000	Simple procurement	Price checks/simple purchase
2.	\$5,001-50,000	Intermediate	Informal procurement competition, written quotes
3.	\$ Over 50,000	Formal procurement	Formal competition (bids or proposals)/ contract

A. SIMPLE PROCUREMENT (NOT MORE THAN \$5,000)

Procurement is accomplished through simple purchase. Simple procurement procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of supplies or other property, or services.

A reasonable and adequate number of price checks or quotes should be made by phone, personal inspection, and discussions with vendors, etc., to ensure the highest quality product or service is obtained for the least cost to the procuring entity.

B. INTERMEDIATE PROCUREMENT (\$5,001-\$50,000)

Procurement is accomplished by obtaining three written price quotes, when possible or through informal negotiation if the item or service is expected to cost less than \$50,000. If the actual cost exceeds \$50,000, then the procurement must go to formal procurement, as outlined in Section D below. Files shall contain documentation of competition. No advertising is required but all procurement shall be evidenced by a written agreement embodying all provisions and conditions of the procurement. This requirement for written agreement may be met through preparation of a letter on municipality or vendor letterhead, signed by the vendor or appropriate elected and/or appointed official or representative, stating such conditions and terms as price, number of units or purchase (e.g., ea., cs., bx., etc.) or product, delivery date or when service is to begin, point of delivery, specifications, etc. Any price quotes warranties, guaranties, certifications or contracts shall be attached and filed.

C. FORMAL PROCUREMENT (REQUIRED OVER \$50,000)

Formal Procurement includes the acquisition of commodities or securing services that are expected to cost \$50,000 or more and requires formal advertising and submission of competitive sealed bids, sealed proposals, or competitive negotiation.

Sealed bids are publicly solicited, and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsive bidder who conforms to or exceeds all material requirements, terms and conditions of the invitation for bids, and presents the lowest reasonable price that meets requirements and needs.

Sealed Bidding shall be used unless the Board of County Commissioners certifies in writing that sealed bidding is not practicable or advantageous, in which case procurement shall be based on sealed proposals, or on competitive negotiation when required by Florida Statutes.

The technique of competitive negotiation is normally conducted with more than one source submitting a proposal for services with either a fixed-price or cost-reimbursement type contract awarded. It is generally

used when conditions are not appropriate for the use of sealed bids or proposals indicating fees. Florida Statutes shall determine the manner in which such negotiations are performed and the types of contractual services, which are to be procured in this manner.

Any contract more than \$100,000 will require a performance bond and must adhere to all Section 3 regulations.

Noncompetitive negotiation shall be used when other types of procurement are infeasible (see Section VI).

V. SOLICITATION AND AWARD

A. INVITATIONS FOR BIDS

1. The invitation to bid is used when the procuring entity is capable of defining the scope of work for which a contractual service is required or when the procuring entity is capable of establishing precise specifications defining the actual commodity or group of commodities required.
2. Invitation to bid shall be a written solicitation for sealed competitive bids with the title, date, and hour of the public bid opening designated and which specifically defines the commodity, group of commodities, or services for which bids are sought. It includes instructions describing all conditions for bidding and shall be distributed (or available) to all prospective bidders simultaneously.
3. Sealed bids are required to be received at a specified place not later than a specified time and date. Failure to comply with any instructions pertinent to the delivery of such bids may result in their being rejected.

B. REQUEST FOR PROPOSALS (RFP)

A request for proposals (RFP) shall be a written solicitation for sealed proposals with the title, date, and hour of the public opening designated. The request for proposals is used when (a) the procuring entity is incapable of specifically defining the scope of work for which the commodity, group of commodities, or contractual service is required and when it requests that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document, or (b) when quality of performance is to be the primary factor for selection. With respect to competitive negotiations, the offeror shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines are fair, competitive, and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity and shall refer to the provisions of S. 287.055, Fla. Statutes (1989).

A request for proposals includes, but is not limited to, general information, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria. Requests for proposals shall state the relative importance of price and any other evaluation criteria.

C. ADVERTISING

The advertisement must be written in a clear, concise manner and in a way, which would invite competitive bidding consistent with Section 255.0525, Florida Statutes. The advertisement shall contain at least the following minimum information:

1. Time, date and location for receiving and opening bids or proposals (the date shall not be less than five (5) days after the final advertisement is published),
2. General description of the commodity or item being requested,
3. Where and how detailed specifications and bid forms (if applicable) may be obtained,
4. Terms and conditions of the contract to be awarded,

5. Criteria for selection of the vendor or contractor, including the relative weight to be given to the different factors, (See Appendix A).

The solicitation of competitive bids or proposals for any project to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. For projects costing more than \$500,000 shall be publicly advertised at least once in a newspaper of general circulation in the county at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference. The advertisement shall be published in at least one daily newspaper of general circulation in a nearby federal Office of Management and Budget (OMB) designated metropolitan statistical area (MSA).

If the location, date, or time of the bid opening changes, written notice of the change must be given, as soon as practicable after the change is made, to all persons who are registered to receive any addenda to the plans and specifications.

For those bids under the above amounts, any procurement which requires public notice in a newspaper based on the local CDBG procurement policy shall be published in a daily newspaper of general circulation in a nearby federal Office of Management and Budget (OMB) designated metropolitan statistical area (MSA). Alternatively, the county may substitute such notice with any solicitation procedure which generates at least three responsible and responsive bids or proposals which can be considered. Such procedure shall allow at least 12 days for receipt of the proposals or bids.

Public notice should also include solicitation of minority owned business enterprise and women owned business enterprise (MBE/WBE) contractors.

Sealed bids or sealed proposals will be received at any time during normal working hours prior to the time and date as specified. Each proposal shall be annotated with the time and date received. The bids or proposals shall be placed in the applicable file and publicly opened and read at the time designated for the bid opening.

D. EVALUATION

The contract shall be awarded to the lowest responsible and responsive bidder or proposer whose bid or proposal most completely meets the requirements and criteria set forth in the invitation for bids or request for proposals.

The term "responsible bidder or proposer" refers to the capability of a vendor or contractor to perform fully all aspects of the contract. Financial capability, integrity, and reliability of the bidder or proposer, all of which tend to ensure good faith performance, shall be criteria in evaluation of responsiveness.

The term "responsive bidder or proposer" means a bidder who has submitted a bid or proposal, which materially conforms to all provisions of the specifications and the invitation to bid or request for proposal.

Evaluation criteria and requirements for bids set forth in the invitation for bids shall be used to determine the most responsible and responsive bidder. Award shall be made to the responsible individual firm whose proposal is considered most advantageous to the program, with price and other factors considered.

In procuring services for grant administration, evaluations of vendors or service suppliers shall include a proven track record and sound reputation; adequate financial strength; high ethical standards; and a record of adhering to specifications, of maintaining shipping or service delivery schedules, and of giving a full measure of service. Consideration may also include the prospective contractor's records of past performance under CDBG grants. This factor is not meant to exclude consideration of new firms, but rather, to include past performance and experience as a potential criterion.

All bidders will be notified that they were or were not selected for award of contract as soon as possible following the evaluation and decision process.

E. MULTIPLE SERVICE AWARDS

Vendors or service suppliers will be considered for multiple sources of supply or multiple services when it can be demonstrated that such vendors or services suppliers either are sole sources of the services or are the responsive proposer whose proposal is determined in writing as a result of a competitive process to be the most advantageous to local government.

For each service listed in S. 290.047(5), Fla. Statutes (1989), when included in a multiple service contract, written determination of the need for a multiple service contract and the supporting documentation shall be maintained on file with the sub-grantee.

1. Any Request for Proposal which includes more than one service shall provide the following:
 - a. Proposals may be submitted for one or more of the services
 - b. Qualifications and proposals shall be separately stated for each service.
 - c. The evaluation of the proposals shall be separated for each service.
2. A written evaluation, such as a ranking sheet or narrative, shall be prepared for each proposal, ranking or comparing each proposal to the criteria in the published Request for Proposals.
3. A separate professional services contract must be procured and executed between the local government and any professional services consultant for each CDBG sub grant. Each advertisement for procurement of CDBG professional services, except for application preparation, must identify either the CDBG funding cycle by federal fiscal year of the CDBG sub grant number. In the absence of any identifier, the procurement will be presumed to be for the CDBG funding cycle closest to the publication date of the advertisement or, if there is no advertisement, the date of receipt for proposals.
4. Each professional services contract must identify the CDBG sub grant number to which it is applicable.

VI. EXCEPTIONS

The non-competitive negotiation method of procurement is solicitation of a proposal from only one source; or after solicitation of several sources (documented), competition is determined inadequate (Refer to 2 CFR Part 200.320). It may be used only:

1. When procurement or award of contract is infeasible under simple or intermediate procurement or through formal (sealed bid) competition; and
2. Under one of the following circumstances:
 - a. The item is available only from a single source; or
 - b. Public exigency or emergency exists such that the urgency for the requirement will not permit a delay incident to competitive bidding; or
 - c. In the case where grant funds are being used, the federal or state (whichever is more stringent) grantor agency authorizes non-competitive negotiations; or

- d. After solicitation of a number of sources, competition is determined inadequate; or
 - e. The contract item is available under a State of Florida Contract.
3. Department of Economic Opportunity (DEO) must provide written approval prior to the recipient awarding any contract exceeding \$25,000 procures as a result of inadequate competition, a sole source, or a non-competitive procurement. For contracts below \$25,000 the recipient's files must document the justification for the procurement which complies with 2 CFR Part 200; and a cost analysis be performed verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of cost and profits.

Emergency purchases over \$15,000 and up to \$50,000 shall be authorized by the County Administrator or designated alternate when, based on his/her decision, the delay incurred by following the normal procurement requirements would be detrimental to the best interests of the community. Emergency purchases over \$50,000 shall be authorized by the Board of County Commissioners.

VII. AFFIRMATIVE ACTION/EQUAL OPPORTUNITY

The County is committed to eliminating discrimination based upon race, color, sex, national origin, familial status, age, or physical handicap. In grant programs, the County will comply with requirements of Section 3 (Use of the project area), Equal Employment Opportunity on Federally Assisted Construction Contracts, and Executive Order 11625 (Minority Business). Notice of the policy will be placed in plain sight on the job location for the benefits of interested parties and all contractors and subcontractors so notified. Equal Opportunity posters will be displayed as required.

The procuring entity will encourage the employment of local residents, especially those who have low-to-moderate income and those who are female and/or of a minority racial/ethnic classification.

In accordance with the 1989 State Fair Housing Act (Fla. Statutes S. 760.20), the municipality and any contractors hired with CDBG funds shall not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, age, or religion. (See Section X on Protests for complaint procedures).

The County will encourage and adhere to all federal requirements including, but not limited to:

1. Equal Employment Opportunity requirements
2. Copeland "anti-Kickback" Act.
3. Davis Bacon
4. Contract Work House and Safety Act.
5. Americans with Disabilities Act.
6. Other requirements set forth in any CDBG contract

VIII. CONTRACTS

All contracts procured with state or federal funds shall contain applicable provisions as required by Fla. Statutes (specifically S.287.058), Florida administrative rule, federal law, regulation or executive order. Provisions shall include, but not be limited to, such requirements as bonding, equal employment opportunity, contract termination, record retention, public access to records, reporting, remedies for breach, conflict of interest, labor standards compliance, pre- and post-audit requirements, and compliance with environmental laws. In addition, administrative, contractual, or legal remedies where contractors violate or breach contract terms and provide for sanctions and penalties as may be appropriate. Termination for cause and for convenience by the grantee or sub grantees including the manner by which it will be affected and the basis for settlement (All contracts in excess of \$10,000).

IX. CODE OF CONDUCT

No employee, officer or agent of the procuring entity shall participate in the selection, award or procurement of an application, administration, engineering, or construction contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when (a) the employee, officer or agent, (b) any member of his immediate family, (c) his or her partner, or (d) an organization which employs, or is about to employ, any of the above, will receive a financial or other direct benefit of CDBG funds from the contract award. In any of these cases, the employee, officer, or agent will abstain from voting on the award.

Officers, employees, and agents of the procuring entity will neither solicit gratuities, favor or anything of monetary value, nor accept any unsolicited gratuity, favor or gift valued above \$25, from contractors or potential contractors, or parties to sub agreements.

Violation of this policy shall be subject to penalties, sanctions or other disciplinary action as permitted by state or local law. Upon conviction in a State Court of competent authority, a violator may be found guilty of a first-degree misdemeanor, punishable as provided in Fla. Statutes S.775.082 or S.775.083.

X. PROTESTS

Objection to procurement shall be issued, in writing, to the Purchasing Division within five (5) working days of purchase or selection to purchase under contract. A response shall be issued to the objecting party within five (5) working days. An objection shall be considered valid only if it discloses a violation of this policy. The County will notify the granting agency of all protests received.

For employment discrimination, contact:

The U.S. Equal Employment Opportunity Commission
2401 E. Street, N.W.
Washington, D.C., 20507
1-800-872-3362

For housing discrimination, contact:

Florida Commission on Human Relations
325 John Knox Road, Bldg. F, Suite 240
Tallahassee, Florida 32303
1-800-342-8170

ATTACHMENT B

**St. Lucie County Transit
Purchasing Procedures Manual**

Revision Date: 04/13/2016

Section I: Overview, Purpose, Applicability and Definitions

Overview

The St. Lucie County Transit Procurement Manual outlines the policies regarding the use, award, monitoring and reporting of procurement Contracts funded all or in part with Federal Transit Administration funds. The County routinely expends funds to purchase goods and services including, but not limited to, buses, bus parts, supplies, equipment, construction services and professional services.

Purchases involving Federal funds are in compliance with *Federal Transit Administration (FTA) Circular 4220.JF, Third Party Contracting Guidelines*. The procurement procedures described in this document have been developed to assure compliance with these guidelines.

This manual governs revenue Contracts, the consideration of proposals initiated by the County, and unsolicited proposals received by the County.

The basic procurement objective is to secure the best goods and/or services at the lowest available price, consistent with quality requirements and delivery needs. The practice of competitive bidding, whether formal or informal, not only promotes obtaining reasonable prices, but also guards against improper practices.

Failure to appropriately procure goods and services funded by the FTA could seriously affect the County's receipt of Federal funding. All County staff involved with procurement activities must familiarize themselves with this manual, FTA regulations and other applicable documentation as promulgated.

Purpose

This manual sets forth the requirements that the County must adhere to in the solicitation, award, and administration of its third-party Contracts for goods and services.

These guidelines are meant to:

- a) Formalize practices which ensure that the County's interests are protected.
- b) Assure that all federal and state procurement laws and regulations are followed and
- c) Communicate policies; give guidance to purchasing personnel and to others with delegated purchasing authority.

Applicability

The guidelines denoted herein apply to all commodity, service and professional service Contracts procured by the County. These guidelines adhere to the Federal Procurement Requirements outlined in FTA Circular 4220.1F as a way of ensuring compliance with FTA requirements in all the County's procurement activities.

The County shall not be precluded from adopting additional requirements for particular Contracts relating to the matters covered by this manual so long as such additional requirements are not in conflict with the requirements outlined in FTA Circular 4220.1F.

Definitions

When used in these guidelines:

Advertisement: The publication of a notice of procurement on the County website, DemandStar website and legal advertisement section of local newspaper when deemed necessary to insure greater exposure and interest.

Best Value: A selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach and quality of proposed personnel and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to the County.

Brand Name: A name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names or model names/numbers that are associated with only one manufacturer.

Commodities: Standard articles of commerce in the form of material goods, supplies, products or similar items. Commodities do not include technology.

Federal regulations permit grant applicants, such as the County, to incur project costs before receiving formal approval or grant awards. It is the practice of the County not to incur costs or entertain the award of Contracts for capital projects to be funded in whole or in part with Federal aid unless Federal aid supporting the projects is dedicated in an adopted Federal budget as a formula appropriation to the County or as an earmarked appropriation to the County.

Construction: The supervision, inspection and building of, and all expenses incidental to the acquisition, construction, repair, painting or reconstruction of facilities and equipment for use by the County.

Contractor: Any person, partnership, private corporation or association: selling materials, equipment or supplies, or leasing property or equipment, to the County for constructing, reconstructing, rehabilitating or repairing buildings or other improvements for or on behalf of the County rendering or providing services to the County pursuant to a Contract.

Contracts or Procurement Contracts: A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. Contracts would include bilateral instruments, awards and notices of awards; job orders or task assignment letters issued under basic ordering agreements; letter Contracts, orders, such as purchase orders, under which the Contract becomes effective by written acceptance or performance; and bilateral Contract modifications.

The parties to a Contract must possess the legal capacity to enter into the Contract, and they must assent to the terms of the Contract. Verbal agreements are not recognized as Contracts.

Contract Administrator: This individual will be a County employee and will be the primary contact with the Contractor and shall establish frequent and direct communications with the Contractor. In most cases, this individual will be either the County Purchasing Manager or the staff member who led the procurement process for the project.

Cost Reimbursement (CR) Type Contract: A general compensation arrangement which requires the County to pay the Contractor a fixed fee plus all allowable actual costs (as established by

predetermined cost principles and rates) provided such costs and fee do not exceed the final negotiated Contract price, as incurred by the Consultant in performing the agreed to Scope of Work. This type of Contract is appropriate for qualifications- based procurements and negotiated procurements based on a Scope of Services rather than detailed specifications.

Design-Bid-Build: The project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services Contract, and separately Contracts for at-risk construction, by engaging the services of a Contractor through sealed bidding or competitive negotiations.

Design-Build: A system of contracting under which one entity performs both architectural/engineering and construction under one Contract.

Design Specifications: Specifications based on the design of a product or service. Typical design specifications may include dimensions, materials used, commonly and competitively available components, and non-proprietary methods of manufacturing.

Disadvantaged Business Enterprise: A small business concern as defined by 49 CFR Part 26 and has been certified as such by the Unified Certification Program (UCP).

Emergency Procurement: The procurement of goods or services under circumstances where a delay in procurement may result in danger to employees or the public, damage to the County facilities or equipment, or an impediment, delay or danger to the business operations of the County.

Federal Transit Administration: FTA is one of ten modal administrations within the U.S. Department of Transportation. The Federal government, through the FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees grants to state and local public transit providers. These grantees are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal mandates along with statutory and administrative requirements.

Firm Fixed Price Type Contract (FFP): A general compensation arrangement, which places the risk of performance for a lump sum on the Contractor, regardless of the actual costs incurred by the Contractor. The only allowable adjustments to the lump sum Contract price are those arising from authorized changes in scope of services or changes in specifications. This type of Contract is appropriate for acquiring commercial items, or for supplies or services, which can be clearly defined with either performance/functional specifications or design specifications where there are no substantial uncertainties relating to cost, performance, or schedule. This type of Contract may only be used in sealed bidding procurements.

Formal Bidding: Bidding involving public advertising, sealed bids, or RFP, and is required for procurements of goods or services in an amount of \$50,000 or more, except as otherwise provided herein.

General Services: Those services provided by an individual or business, which are not considered professional or construction.

Independent Cost Estimate (ICE): Such estimates may be obtained from published competitive prices, results of previous competitive procurements, including some type of price escalation percentage, or price quotes from manufacturers.

Informal Bidding: Bidding without public advertising but within formal procedures, which may include, without limitation, written, telephonic or electronic bidding.

Invitation for Bids (IFB): The County request for sealed bids setting forth the detailed specifications for the work to be performed.

Micro-Purchase: Purchases under \$3,000, purchases below this threshold may be made without obtaining competitive quotations if the County determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be no splitting of procurements to avoid competition.

Minority Business Enterprise (MBE): Any business enterprise, which is at least fifty-one percent (51%), owned by, or in the case of a publicly owned business, at least fifty-one percent (51%) of the capital stock of which is owned by citizens or permanent resident aliens who are minority persons, and such ownership interest is real, substantial and continuing. The minority ownership must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in the State of North Carolina, be independently owned and operated and not be dominant in its field. Minority Business Enterprises are certified as such through the State of Florida.

Offer: A promise to provide goods or services according to specified terms and conditions in exchange for material compensation,

Organizational Conflict of Interest: Because of other activities, relationships, or Contracts, a Contractor is unable, or potentially unable, to render impartial assistance or advice to the County; a contractor's objectivity in performing the Contract work is or might be otherwise impaired; or a Contractor has an unfair competitive advantage.

Performance Bond: An instrument of security furnished by the Contractor and his surety for the performance of the work in accordance with the Contract documents.

Performance Specifications: Specifications based on the function and performance of a product or service under specified conditions, preferably conditions that can be reproduced for testing purposes. Performance specifications may include useful life, reliability in terms of average intervals between failure, and capacity.

Piggybacking: An assignment of existing Contract rights to purchase supplies, equipment, or services.

Procurement: The acquisition by the County of products, services or public works by purchase process and policy as outlined in this manual, accepting:

- The purchase of periodicals, reference materials, treatises, or professional research tools.
- The payment of fees or tuition associated with continuing education courses, training courses, conferences, seminars, and symposiums,
- Expenditures governed by the County "Travel Policy",
- The purchase of advertising space or advertising time in any medium.
- Expenditures associated with internal or public meetings

Professional Services: Services of a professional nature, including without limitation, accounting, legal, medical, occupational, architectural, engineering, consulting, advertising, marketing, and planning.

Professional Services Contract: Any written agreement to provide a service including but not limited to legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, marketing, advertising, architectural, engineering, surveying or other personal services of a consulting, professional or technical nature, for a fee, commission or other compensation, by a person or persons who are not providing such services as officers or employees of a state agency or public corporation.

Prompt Payment: Payment of a debt due and owing by the County before interest accrues thereon pursuant to the terms of any Contract established in accordance with the guidelines contained in this manual.

Purchasing Manager: The St. Lucie County Purchasing Manager, who has responsibility for the overall conduct of the procurement. This individual, along with the County Transit Manager, is responsible for ensuring compliance with guidelines contained in this manual and all applicable governmental regulations.

Responsible: A potential Contractor is considered responsible if it can demonstrate that it has the ability to perform successfully under the terms of the proposed Contract, taking into account the offeror's technical and financial capability. Responsibility refers to the ability of the Contractor to deliver the requested items/services.

Responsive: A bid, which complies, in all material respects, with the terms of the solicitation and is completed, executed, and submitted in accordance with the instructions set forth in the solicitation. Responsiveness refers to the integrity of the submitted bids and the bid process.

Services: A professional, consulting, technical, or other service, including but not limited to, legal, testing, accounting, bookkeeping, secretarial, management consulting, audit, investment banking, planning, training, statistical research, insurance, advertising, public relations, architectural, engineering, appraisal, janitorial, surveying, housekeeping, and waste disposal, performed for a fee or other compensation.

Single Bid: Two or more competitive bids are solicited and only one bid is received.

Small Procurement Informal Bidding: A small procurement method of procuring goods or services costing \$3,000 to \$50,000 based upon competitive selection. Quotes will be requested and received via fax, e-mail or regular mail.

Sole Source: The goods or services to be procured are available from only one responsible source; or no other goods or services will satisfy the County requirements; or prior state or federal approval has been granted.

State Bid Contracts: Purchase prices established for various items, which have been competitively bid by the State of Florida, and which may be used by the County to make procurements for goods/services provided FTA requirements are included in the Contract.

Surety Bond: Refers to an agreement between a transit industry Contractor or supplier and a surety bond writer that guarantees a Contract obligation with a transit property. Typically, transit agencies require bonds that cover 100% of the value of a Contract. If a Contractor defaults on a Contract or faces financial difficulties, the Surety Bond underwriter will owe the transit agency the full amount of the Contract.

Tag On: Refers to the addition of work (supplies, equipment, or services) that is beyond the scope of the original Contract that amounts to a cardinal change. "In Scope" changes are not tag-on. The use of tag-on is prohibited.

Time and Material (T&M) Type Contract: A general compensation arrangement, which provides for a fixed rate including overhead and profit, and material paid for at cost, plus handling charges. This type of Contract is rarely used by the County, but is permitted only:

1. After a determination that no other compensation arrangement is suitable.
2. If the Contract or purchase order contains a price ceiling that the Contractor exceeds at its own risk
3. All labor and equipment rates (including overhead and profit) are predetermined and set forth in the Contract and materials are to be paid for at cost.

Transit Manager: The County Transit Manager, who has responsibility for the overall responsibility for the transit program. This individual, along with the Purchasing Manager, is responsible for ensuring compliance with guidelines contained in this manual and all applicable governmental regulations.

Women-owned Business Enterprise (WBE): Any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly owned business, at least fifty-one percent (51 %) of the capital stock of which is owned by citizens or permanent resident aliens who are women, regard less of race or ethnicity, and such ownership interest is real, substantial and continuing. Women business owners must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in State of Florida, be independently owned and operated and not be dominant in its field. Women-Owned Business Enterprises are certified as such through the State of Florida.

Veteran's Preference/Employment: As defined in section 2108 of title 5 Chapter IV, 2.c. (1) C4220.1F of FTA. Veterans who have the requisite skills and abilities to perform the construction work required under the contract, shall be given a hiring preference, to the extent practicable. This requirement shall not be understood, constructed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

II: General Procurement Guidelines

I. Contract Administration System

The County maintains a Contract administration system to ensure that Contractors perform in accordance with the terms, conditions, and specifications of their Contracts, including purchase order Contracts.

2. Approvals and Responsibilities

The attached St. Lucie County Summary of Contract Award Procedures specifies the Contract authorization and signature authority required for various Contracts.

Staff responsibilities are as follows:

Purchasing Manager

- Responsible for the development and implementation of procurement policies and procedures.

- Coordination of all procurement activities including goods and services and procurement files.
- Ensuring that all purchases made by St. Lucie County Board of County Commissioners comply with all applicable state, federal and local laws, and regulations.
- Placing all required advertisements for bids by St. Lucie County Board of County Commissioners, conducting bid openings and performing cost and product comparisons to ensure purchases are made in a timely fashion to ensure efficient work processes.

Transit Manager

- Responsible for the development and implementation of procurement policies and procedures specific to the transit program.
- Ensuring that all purchases comply with all applicable state, federal and local laws and regulations.
- Placing all required advertisements, conducting bid openings, and performing cost and product comparisons to ensure purchases are made in a timely fashion to ensure efficient work processes.

M/WBE Coordinator:

Serving as the Disadvantaged Business Enterprise Officer (DBE) and Minority and Woman-owned Business (MWBE) officer and reporting directly to the County Administrator on all matters related to DBE and MWBE. (Including verification of D/M/WBE subcontracting reporting requirements.)

3. Ensuring Most Efficient and Economic Purchase

All purchase requests shall be reviewed by the Transit Manager, the Community Services Director, and the Purchasing Manager to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. In the case of property, consideration will also be given to lease versus purchase of the property to determine the more economical alternative.

4. Intergovernmental Procurement Agreements

To foster the greater economy and efficiency, the County may enter into State and local intergovernmental agreements as allowable by law for the procurement or use of common goods and services. The requirements and standards of this document apply equally to procurements entered into under such agreements.

5. Awards to Responsible Contractors

The County shall make awards only to responsible Contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In making a responsible Contractor determination, consideration shall be given to such matters as Contractor integrity, compliance with public policy, record of past performance and financial and technical resources. Responsibility differs from responsiveness in that responsibility generally applies to the offeror. Responsive applies to the bid submission and its conformance with the specifications or requirements of the solicitation document.

6. Written Record of Procurement History

A properly documented procurement file should be a complete record of procurement actions and should fully support the successful Contractor's bid price. It provides a complete background as a basis for informed decisions at each step in the acquisition process. A well-documented file also

supports actions taken, provides information for reviews and investigations and furnishes essential facts in the event of litigation or legislative inquiries. If the procurement action is the result of a Contract amendment or exercise of an option, sufficient data should be included to fully support the basis for the price and procurement action. The County shall maintain records detailing the history of all procurements using the attached Procurement Checklist as a guide for all documentation to include in the history.

7. Settlement of Contract Issues/Disputes

In accordance with good administrative practice and sound business judgment, the County will be responsible for the settlement of all Contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the County of any Contractual responsibility under its Contracts. Violations of the law will be referred to the State or Federal authority having proper jurisdiction.

8. Contract Period of Performance

The County shall not enter into any Contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options.

All other types of Contracts (supply, service, leases of real property, revenue, and construction, etc.) shall be based on sound business judgment. The County will 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 has been awarded, an extension of the Contract term length that amounts to an out-of-scope change will require a sole source justification.

9. Independent Cost Estimates.

The County Transit Division shall perform an Independent Cost Estimate (ICE) using the attached ICE form for every procurement before receiving bids or proposals. An ICE is an estimate of the proper price level, or the value of the supplies or services being purchased. This estimate can be used in determining the reasonableness of the actual price offered.

In some cases, obtaining cost estimates may be difficult or may lie outside the competence of the transit staff. In the case of construction projects, a design or engineering firm may already be under Contract and may perform this service.

Equipment estimates can often be prepared from published price lists or from past competitive procurements updated with inflation factors. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.

Professional services often range widely in both price and quality. It may be worth obtaining a professional cost estimate by a firm not interested in the final procurement. In the case of facility design services, industry standards to estimate design as a percent of construction are available. Other transit authorities are also a valuable source of cost estimating information if they have undertaken similar projects.

10. Contract Cost and Price Analysis

A Cost or Price Analysis is a determination that the cost or price offered by a Contractor is reasonable, given current market conditions. The purpose of Cost or Price Analysis is to ensure that the County

does not pay unreasonably high prices. A Cost or Price Analysis must be performed in connection with every procurement. The method and degree of analysis is dependent on facts surrounding the particular procurement situation. Prices that are unreasonably low can also be detrimental to good procurement if they prove to be an indication that the offeror has made a mistake or misunderstood the work to be performed. All procurement files shall contain minimum documentation that the offered price is fair and reasonable.

11. **Federal Cost Principles**

Costs or prices based on estimated costs for Contracts under grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal Cost Principles. The County shall use Federal Cost Principles to determine allowable costs for all federally funded cost-reimbursement type Contracts.

12. **Cost Plus Percentage of Cost**

The cost plus a percentage of cost and percentage of construction cost methods of Contracting shall not be used by the County.

13. **Procurement with State and Federal Funds**

In all cases where procurements are made by with state and/or Federal funds and are conditioned upon, or subject to, laws or regulations for purchasing, the County shall observe such laws and/or regulations. This shall apply to all matters, including bidding; advertising for bids, reviewing bids, awarding Contracts, monitoring awarded Contracts, and reporting awarded Contracts.

14. **Full and Open Competition**

All procurement transactions above the micro-purchase level, as defined in Section I of this manual, will be conducted in a manner that provides maximum open and free competition. The following are considered to be restrictive of competition and may not be used in any solicitation:

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 Section II.16.

Brand Name Only: Specifying only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered. Brand names are among the most restrictive types of specification.

Restraint of Trade: Non-competitive practices between firms or affiliated companies.

Retainer Contract: Noncompetitive awards to any person or firm on retainer Contract if that award is not for the property or services specified for delivery under the retainer Contract.

Organizational Conflicts of Interest: An organizational conflict of interest means that because of other activities, relationships, or Contracts, a Contractor is unable, or potentially unable, to render impartial assistance or advice; a contractor's objectivity in performing the Contract work is or might be otherwise impaired; or a Contractor has an unfair competitive advantage.

Arbitrary Action: Taking any arbitrary action in the procurement process, such as awarding to other than the most favorable Contractor is prohibited by the County.

Excessive Bonding: Imposing unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.

Improper Sole Source: Negotiation without proper justification.

15. **Geographic Preferences:**

The County shall not use statutorily or administratively imposed in state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This requirement does not preempt State licensing laws.

16. **Prequalification Criteria:**

The County does not currently pre-qualify products or persons prior to solicitation. However, in the event that pre-qualification becomes necessary in the future, The County will ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring goods and services are current and include no less than three (3) sources to ensure maximum full and open competition. As such, pre-qualification lists must contain a date as to when the list was last updated and a signature of the person who updated it. The County will not use pre-qualification lists that are over one (1) year in age and do not contain at least three persons, firms, or products. In addition, the County will not preclude potential bidders from qualifying during the solicitation period. This period is defined as the period from issuance of the solicitation to its closing date.

17. **Written Procurement Selection Procedures:**

The County shall use written selection procedures for procurement transactions as follows:

Solicitations shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

18. **Request for Deviation from Specifications:**

Specifications for goods and/or services shall be written clearly and concisely to minimize ambiguity and to ensure that the County receives the goods and/or services that are ideally suited for its needs. Where appropriate, provisions should be made in the specifications to allow bidders to seek deviations from the specifications. The purchaser and user should consider all such requests and approve those requests that enhance flexibility in bidding without sacrificing the quality or integrity of the goods and/or services being procured.

All requests for deviations that are submitted, accompanied by the County responses, shall be shared with all potential bidders. Such documentation shall be provided to all bidders prior to bid opening. All requested deviations from these specifications will be responded to, in writing, in one of the following manners:

- a. Approved as an equal; or,

b. Rejected.

The County will respond in writing to all requests no later than five (5) calendar days prior to bid opening. All requests and the County responses thereto, will be furnished to all prospective bidders and become addenda to these specifications.

19. **Written Addenda:**

The County reserves the right to issue clarifying information regarding the content of a procurement document should the County, in its sole judgment, determine it is necessary to do so.

20. **Written Protest Procedures:**

The County shall include the attached written protest procedures in its solicitations to handle and resolve disputes relating to their procurements. The County shall disclose information regarding all protests to FTA. All protest decisions must be in writing. It is understood that reviews of protests by FTA will be limited to the County's failure to review a complaint or protest, failure to comply with the established protest procedures, or violations of Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

21. **Options:**

An Option is a unilateral right in a Contract by which, for a specified time, the County may elect to purchase additional equipment, supplies, or services called for by the original Contract, or may elect to extend the term of the original Contract. If the County elects to use Options, the following requirements apply:

Evaluation of Options: The option quantities or periods contained in the Contractor's bid or offer must be evaluated to determine Contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a Sole Source procurement. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers, or must be treated as Sole Source awards)

Exercise of Options: The exercise of an Option must be in accordance with the terms and conditions of the Option stated in the initial Contract awarded. An Option may not be exercised unless it is determined that the option price is better than prices available in the market or that the Option is the more advantageous offer at the time the Option is exercised. The Option price must be determined to be fair and reasonable, and a written justification of this determination must be included in the procurement file.

22. **Disadvantaged/Minority/Women-Owned Business Enterprise:**

It is the desire of the County to promote and assist participation by D/M/WB/E's, and to facilitate a fair share of the awarding of Contracts thereto.

The County DBE Liaison Officer shall maintain a list of DBE entities certified to perform public work, supply items for purchase Contracts, or perform personal or professional services of a kind and nature that may be needed by the County.

The County will, on a routine basis, notify all Vendors, Contractors, Consultants or other firms with which it does business, that it will affirmatively ensure that DBEs will be afforded full opportunity to submit bids, quotes or proposals in response to the County solicitations. The County will comply with all applicable equal opportunity laws and regulations.

23. **Payments:**

Advance Payments: The County shall not participate in Advance Payments to a Contractor prior to the incurrence of costs by the Contractor unless prior written concurrence is obtained from FTA or other appropriate funding provider. The County Contracts shall not contain Advance Payment provisions unless prior written concurrence is obtained from FTA.

Progress Payments: Progress Payments may be used, provided the following requirements are followed:

- a. Progress Payments are made only to the Contractor for costs incurred (as opposed to percent of completion) in the performance of the Contract, and
- b. When Progress Payments are used, the County must obtain adequate security (materials, work in progress and finished goods) for which Progress Payments are made. Adequate security for Progress Payments may include taking title, irrevocable letter of credit or equivalent means to protect the County's interests in the Progress Payments.
- c. Percent of Completion payments are used by the County in its large construction Contracts.

Partial Payments: Can be made based upon specified deliverables as agreed to by the County and Contractor.

Final Payment: Final payment is made to the Contractor when it has satisfied all the deliverable requirements called for by all provisions of the Contract, including submission of all required documentation. Final payment signifies that the performance obligations of both parties to the Contract have been satisfied. Before making a final payment, the Project Manager shall obtain a signed release from the Contractor releasing the County from any further claims by the Contractor. The Project Manager shall also obtain a signed receiving and inspection receipt from the Community Services Director certifying that all deliverable items have been received, inspected and accepted as being in conformance with the Contract specifications.

24. **Emergency Procurements:**

From time to time, emergency situations may arise which require that a procurement be made without following normal purchasing procedures. Emergency situations should be restricted to those times when delay in completing the procurement could result in jeopardy to persons or property. In addition, the situation leading to the emergency should be one that could not be normally anticipated. If an emergency situation occurs, it must be documented, and this documentation must be attached to the purchase order or placed in the procurement file. The procurement must be approved by the Purchasing Manager.

Emergency procurements shall, to the extent that time permits, follow regular procurement guidelines concerning the solicitation of quotes and the approval of the procurements. A written memorandum justifying the emergency nature of the procurement shall be maintained in the procurement file. In all cases of emergency purchases, solicitations should be requested from as many potential sources as is practicable under the circumstance. If soliciting from only one source a Sole Source justification in writing must accompany the procurement documentation. A Cost /Price Analysis must also be prepared.

25. **Bonding Requirements:**

To insure the adequate and expeditious provision of goods, equipment and/or services procured by the County, Bid or Performance Bonds may be required where appropriate, or as stipulated by state or Federal law. Final payment, however, will be withheld from a vendor until the Community Services Director certifies as to the successful and total completion of the goods, equipment and/or services procured.

All construction Contracts in **excess of \$50,000** shall require a 5% bid guarantee; a Performance Bond or certified check or other guaranteed negotiable instrument or letter of credit for 100 % of the Contract price in a form acceptable to the County guaranteeing the Contractor's faithful performance of all terms under such Contract; Payment Bonds (in the amount of 50% on Contracts under \$1 million, 40% on Contracts between \$1-\$5 million, or \$2.5 million on Contracts over \$5 million). Performance security is not mandated for product Contracts.

In instances where a Performance Bond is offered, the Bond shall be in the amount of the Contract and issued by a duly incorporated entity authorized to guarantee the faithful performance of Contracts and to do business in the State of North Carolina as a surety.

Letter of Credit: A Letter of Credit used as bid or performance security must:

- a. Be an irrevocable Letter of Credit issued by a bank or financial institution of A- rating or better,
- b. Be signed by an authorized representative of the issuing institution, and
- c. Name the County as beneficiary and be in a form otherwise acceptable to the County.

The Letter of Credit must state that an amount representing at least ten percent (10%) of the bid price is available to be drawn on, unconditionally, by the County under the expressed terms and conditions. These terms and conditions, including the location at which the County can draw the funds, an effective date and an expiration date, should be clearly stated in the letter of credit.

26. **Insurance:**

Each Contractor/Vendor shall maintain the appropriate kinds and limits of insurance as imposed by law or the Contract upon him with respect to all work and operations performed under the Contract by the Contractor/Vendor and each of their subcontractors.

Each policy shall list out the County and their members, officers, agents, servants, and employees; and other substituted or additional agents the County may hire as the additional insured.

27. **Prompt Payment Policy:**

It is the policy of the County to make payment of a debt due and owing by the County before interest accrues thereon pursuant to the terms of any Contract established in accordance with the guidelines contained in this manual.

28. **Buy America Requirements:**

The County is a grantee of the FTA. As a recipient of FTA funds, the County is required to comply with the Buy America requirements specified in 49 CFR Part 661, which state that, except in certain enumerated situations, no funds may be obligated by the FTA for a grantee project unless all iron, steel and/or manufactured items used in the project are produced in the United States. The "Buy America"

requirements apply to Construction Contracts and Acquisition of Goods or Rolling Stock. Currently, there is no dollar threshold in the FTA regulations, thus "Buy America" provisions apply to all Contracts, both operating and capital, regardless of the dollar amount involving Federal funds. However, FTA has established a general waiver for inclusion of this provision in small purchase procurements (defined by Federal Regulations as less than \$100,000).

The "Buy America" requirements state that:

- a. The County shall adhere to the "Buy America" clause set forth in its grant Contract with the FTA.
- b. The County shall include in its bid specification for procurement an appropriate notice of the "Buy America" provisions; such specifications to require, as a condition of responsiveness, that the bidder submit with its bid a completed "Buy America" certificate.
- c. Whether or not a bidder certifies that it will comply with the applicable requirement, such bidder is bound by its original certification and is not permitted to change its certification after bid opening. A bidder that certifies that it will comply with the applicable "Buy America" requirements is not eligible for a waiver of those requirements.

The following statement is contained in the County's grant Contracts with FTA:

"Sections 165(a) and (b) of the Surface Transportation Assistance Act of 1982, as amended, require that Federal funds shall not be appropriated or utilized for any Contract awarded unless all iron, steel and manufactured products used in FTA-funded projects are produced in the United States; however, these general requirements may be waived by the Administrator of the FTA or his/her designee if the Administrator finds:

1. That the application of such general requirements would be inconsistent with the public interest.
2. That the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
3. That the inclusion of a domestic item or domestic material will increase the cost of the Contract between the grantee and its supplier of that item or material by more than twenty-five percent (25 %).

The Administrator will grant this "price differential" waiver if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States; or

With regard to the procurement of buses and other rolling stock (including train control, communication and traction power equipment) under the Urban Mass transportation Act of 1964, that (1) the cost of components produced in the United States is more than sixty percent (60%) of the cost of all components, and (2) final assembly takes place in the United States.

A Certificate of Compliance with Section 165(a), whereby the bidder certifies compliance with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations contained in 49 C.F.R. Part 661, shall be completed for all federally-assisted procurements of steel, iron, or manufactured products. A Certificate of Compliance with Section 165(b)(3), whereby the bidder certifies compliance with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations contained in 49 C.F.R. Part 661, shall be completed for all federally-assisted procurements of buses, other rolling stock and associated equipment."

27. Liquidated Damages:

When liquidated damages are included as a potential remedy in any solicitation there must be a reasonable expectation that damages will be suffered through a delay in the Contract completion. The method of assessment for damages will be established within the solicitation, along with the calculation and rationale to be used in establishing damages. For Federally funded Contracts, any damages recovered must be credited to the project involved unless FTA permits otherwise.

28. Construction Projects -Design-Bid-Build Method:

Definition – Procurement method for construction projects requiring separate Contracts for design services and for construction services.

Design Services – For design services, the County must use qualifications-based procurement procedures in compliance with applicable Federal and State law and regulation.

Construction – Depending on the estimated dollar value of the construction Contract, the County must use either the sealed bid method of procurement or small purchase procedures to procure construction services.

29. Construction Projects- Design-Build Method:

Definition – Procurement method consisting 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.

Procurement Method Determined by Value – Because both design and construction are included in a single procurement, the County must use the procurement method appropriate for the services having the County best cost for the entire procurement, even though other necessary services would not typically be procured by that method. If construction costs are predominant then the County must use the sealed bid method of procurement to select the Contractor. If design costs are predominant then the County must use qualifications-based procurement procedures to select the Contractor.

Selection Processes —The County may structure the design-build procurement using a single step or two-step method.

30. Revenue Contracts:

A Revenue Contract is a Contract in which the County provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of PTA assisted property. While there is some latitude in determining the extent and type of competition appropriate for a particular revenue Contract, The County, to insure fair and equal access to FTA assisted property and to maximize revenue derived from such property, conducts its revenue contracting as follows:

- a. Limited Contract Opportunities: If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the County should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- b. Open Contracting Opportunities: If one party seeks access to a public transportation asset, and the County is willing and able to provide Contracts or licenses to other parties similarly situated, then competition would not be necessary because the opportunity to obtain Contracts or licenses is open to all similar parties.

31. Piggybacking:

While, with certain conditions, the FTA permits the County to use existing Contract rights held by another recipient commonly called "piggybacking" as a method of procurement for FTA funded projects.

- **State or Local Government Purchasing Schedules**

When obtaining property or services in this manner, all Federal requirements, required clauses, and certifications (including Buy America) must be properly followed and included, whether in the master intergovernmental contract or in the recipient's purchase document.

One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the recipient's procurement. When buying from these schedules, the recipient should obtain Buy America certification before entering into the purchase order. You must also determine that the State contracts were awarded with full and open competition and were not subject to geographical preferences (e.g., giving in-state vendors a bidding preference - as some states have such practices that are prohibited by FTA).

Violation or Breach of Contract Terms:

Third party Contracts exceeding \$50,000 must include administrative, contractual, or legal remedies for violations or breach of the Contract by the third-party Contractor.

32. Termination:

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

33. Change Order Procedure:

Change Order means an order authorized by the County directing the Contractor to make changes, pursuant to Contract provisions for such changes, with or without the consent of the Contractor ("change orders" must be within the scope of the original competition). A Change Order must be signed and approved by the County officer or employee who signed the original Contract on behalf of the County.

A Change Order must have an Independent Cost Estimate (ICE) that supports the price provided and must be included with the requisition requesting the change. The Contracts Coordinator must receive a requisition for a change order with the proper authorizations and the ICE must be attached. A Change Order must have a Cost or Price analysis performed to determine that the change price is fair and reasonable. Any Change Order exceeding the maximum Contract amount originally approved by Board of County Commissioners must be approved by Board of County Commissioners.

The Contract must be evaluated to determine if the change in Contract amount has raised the total Contract threshold so that additional clauses or certifications are required (i.e., Buy America, Lobbying, etc.).

Cardinal Change Order: A Contract change which is outside the scope of the original contract, and thus not within the authority of the changes clause. Such changes are "Sole Source Procurements" and must be processed accordingly.

In all cases, Federal Transit Administration circular 4220.1 F (or the most current version) Third Party Contracting Guidelines must be followed. The Best Practices Procurement Manual can be referenced for additional information.

34. Restrictions on Conflicts with Lobbying:

Consistent with the County ethics rules, the County staff engaged in the procurement process shall ensure that the procurement process operates free of conflicts of interest, undue influence, and with qualified Contractors in compliance with federal and state law.

Restrictive Period: The Restrictive Period commences when the County issues its first written document soliciting a response from Offerors through the Contract award and approval.

Designated Contact: The Purchasing Manager is designated as the person who may be contacted during the Restrictive Period by Offerors where such contact is intended to influence a procurement. However, the Purchasing Manager may from time to time designate another person as the designated contact for Procurements as he/she may deem necessary.

Impermissible Contact: Contact which is reasonably interpreted as an attempt to influence a procurement, made to someone other than the designated contact person for procurements during the restrictive period. A permissible contact is a contact made to anyone, where such contact is not reasonably interpreted as an attempt to influence the procurement or, a contact that is intended to influence that is made to the designated contact person for procurements, or a contact that is intended to influence the procurement made to anyone outside of the restrictive period.

Attached to this manual is the St. Lucie County Code of Ethics statement dated XX XX. Failure to comply with this Code of Ethics will result in disciplinary action in accordance with the County's Employee Handbook. Such discipline will be appropriate for the specific violation and can include discharge, even for the first offense.

Section III-Detailed FTA Funded Procurement Guidelines

When an FTA funded purchase is initiated by the County, it will fall into one of the following three procurement categories:

Micro-Purchases: purchases resulting in cost to the County under \$3,000.

Small Purchases: purchases resulting in cost to the County from \$3,000 to \$50,000.

Large Purchases: purchases resulting in an aggregate cost to the County greater than \$50,000.

Micro Purchases:

Micro purchases are those costing \$3000.00 or less. Davis Bacon requirements apply to construction contracts exceeding \$2,000, and it is impermissible to divide or reduce the size of a purchase simply to come within the micro purchase limit. While not an absolute requirement, it remains advisable to obtain competitive quotations from at least two sources if at all possible, and it is therefore necessary to develop a basic specification of what is being purchased so that potential vendors are able to provide quotations on the same product. In almost all cases, this task can be performed by the transit program staff. In the few cases where the basic specification exceeds the technical expertise of the transit program staff, assistance from others within the County who possess the needed expertise is to be obtained by the transit program staff.

Once the basic specification is developed, a purchase requisition is to be entered into the County's purchasing system by the transit program staff. This requisition is to include a copy of the basic specification, the independent cost estimate (ICE), and any quotations or prices that were obtained. The County's Purchasing Division is then to issue a purchase order to the vendor (with a copy to the transit program staff) submitting the lowest quotation as long as there is a determination that 1) the bidder is responsible, 2) the price is fair and reasonable, and 3) that the price does not exceed the ICE by ten percent. If any of these conditions are not met, the process must start over with the development of a new ICE.

A price analysis (PA) is to be conducted to determine if a price is fair and reasonable. In order of preference, the accepted forms of a PA are:

- a. Adequate price competition
- b. Prices set by law or regulation
- c. Established catalog prices and market prices
- d. Comparison to previous purchases
- e. Comparison to a valid ICE
- f. Value analysis

The PA is to be performed and documented by the Community Services Department with a hardcopy being placed into the corresponding procurement file. In most cases, an adequate price competition determination should be used contingent upon there being at least two (2) responsible bidders submitting independent bids and that they both satisfy all the requirements of the solicitation such as being responsive to and meeting the technical requirements for the price bid, and the submission of all forms and certifications required by the solicitation.

In some cases, such as for utilities, prices are set by law or regulation, and they are considered fair and reasonable. All that is needed for the PA is a copy of the rate schedules set by the applicable law or regulation. Once these schedules are obtained, it should be verified that they apply and that the correct price is being charged.

Established catalog prices may be used for the PA assuming that: 1) catalog prices exist in a published catalog; 2) the items are commercial in nature; 3) the items are sold in substantial quantities; and 4) the items are sold to the general public.

Established market prices may be used for the PA assuming that the market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by consulting with buyers and sellers who are independent of the bidder.

Comparison to previous purchases may be used for the PA. However, changes in quantity, quality, delivery schedules, and the economy cause price variations so each differing situation must be analyzed through trend analysis. Also, the Community Services Department must ensure that the previous price was fair and reasonable. This determination must be based upon a physical review of the documentation contained in the previous files.

Comparison to the ICE may be used for the PA so long as the facts, assumptions, and judgments used to develop the ICE are verified and that the ICE still represents a sound estimate for determining if the price is fair and reasonable.

Value analysis may be used for the PA. This requires examining the item and the function it performs so that its worth can be determined. The decision of price reasonableness remains with the Community Services Department.

Small Purchases:

Small purchases are those costing \$3001.00 to \$50,000.00. It is the transit program staff's responsibility to review these requirements and assemble in written form all the provisions, certifications, reports, and forms necessary for the contemplated procurement.

As with micro purchases, small purchases require an ICE and a MOP as well as the specification for whatever is being purchased. Depending on the specific good or service being purchased this specification may be the same as the basic specification included in micro purchases but is likely to be more comprehensive. The specifications must include a clear description of the technical requirements. They must be non-restrictive. And they may include minimum quality standards and performance specifications, but not product specifications.

The Community Service Department shall issue a request for written quotes. As determined by the transit program staff, there may or may not be a pre-proposal conference depending on the complexity of the procurement. In the absence of such a conference (as would occur with such a conference), all prospective vendors are to be provided an opportunity to submit clarifying questions about the procurement and to have an opportunity to review the answers to such questions prior to submission of the bids or proposals.

The next step in the process is to conduct a PA as described above. However, a Cost Analysis (CA) must be performed for procurements requiring the offeror to submit estimates for labor hours, overhead, and materials; procurements where adequate price competition is lacking; and sole source procurements unless price reasonableness can be established based on market analysis.

Cost Analysis, as distinguished from price analysis, is the process of: 1) obtaining cost or pricing data (a breakdown of costs) from prospective contractors or subcontractors; 2) verifying and evaluating the accuracy and allow ability of cost data; and 3) projecting cost data from known to estimated costs to show the effect on overall prices. In the event of a CA, the County's Community Services Department should obtain from the vendors: 1) actual costs previously incurred; 2) the most recent cost estimate for the same or similar items or with a series of prior estimates; 3) current cost estimates from other possible sources providing the same or similar product or service; and 4) independent forecasts of future costs. This information is then to be analyzed, which should result in a determination of a fair and reasonable price or serve as a basis for negotiations. The analysis to include a technical evaluation conducted by qualified individuals other than the transit program staff and an audit review by the County's Finance Department of the accounting records submitted by the bidders. The CA is then to be documented and a hardcopy placed in the corresponding procurement file.

Large Purchases:

Large purchases are those costing \$50,000.01 or more. It is the transit program staff's responsibility to review these requirements and assemble in written form all the provisions, certifications, reports, and forms necessary for the contemplated procurement. All of this documentation is to be provided to the County's Purchasing Division by the transit program staff

As with micro and small purchases, large purchases require an ICE and a MOP as well as the specification for whatever is being purchased. Depending on the specific good or service being purchased this specification may be the same as the basic specification included in small purchases but is likely to be more comprehensive. The specifications must include a clear description of the technical requirements. They must be non-restrictive, and they may include minimum quality standards and performance specifications, but not product specifications.

The County's Purchasing Division shall issue a formal request for bids or proposals, whichever is the case. With very few exceptions, there should then be a pre-bid/pre-proposal conference at which time all prospective vendors are to be provided an opportunity to submit clarifying questions about the procurement and to have an opportunity to review the answers to such questions prior to submission of the bids or proposals.

The next step in the process is to conduct a PA and/or a CA as described above. An agenda item for Board's consideration is then to be prepared. This is to be done by the Community Services Department. It is to include the reason for contractor selection or rejection and a responsibility determination for the successful contractor, including verification that the successful contractor is not barred by the System Award Management system (<http://www.sam.gov>). Only upon approval by the Board does a contract exist for the purchase of the product or service. All such documentation is to be placed in the corresponding procurement file.

Sealed Bid/Invitation for Bids (IFB) Method of Procurement

This method of procurement is the preferred method for small and large acquisitions when one or more of the following factors are present:

- A complete, realistic, and exact specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement lends itself to a firm, fixed-price Contract, and the selection of the successful bidder can be made on the basis of lowest price among responsive bids and responsible bidders.
- No discussion with bidders is needed either before or after bid submission.

Bidding Requirements: Publication of an IFB is required for all large acquisitions. Both the Invitation for Bids and bids are required to be in writing. Bid bonds may be required. Multiple bids/proposals must be obtained from an adequate number of qualified sources (at least two).

Bids: Written bids required. Sealed bids are to be identified as bids by the bidder and will be retained, unopened, until the date and time designated for bid opening. At least two (2) responsive bids/proposals must be obtained. Sealed bid opening shall be public where the Purchasing Manager shall read the bids aloud and prepare a bid summary and certify results. Early opening or disclosure of bids before the deadline is expressly forbidden because it would compromise the competitive process. In the event that such information is disclosed, the procurement process will be re-initiated. As a general rule, bidding time (time from bid release to bid opening) will not be less than fifteen (15) calendar days in order to allow sufficient time to prepare bids prior to bid opening.

Contract Specifications/Statement of Work:

Specifications defining the items or services sought shall be outlined in detail. The specifications must be complete, adequate, and realistic. Specifications must not only describe the product but must also include reliability and quality assurance requirements. Any required criteria for inspecting, testing, and accepting the product shall also be included in the specification. The nature and extent of items and/or services requested will be limited to only that deemed necessary to meet the needs of the user

department. Specifications will encourage full and open competition and must not rule out one or more vendors or favor a particular vendor. Therefore, use of brand names in specifications is allowed solely for the purpose of providing a standard for quality performance. When requesting a "brand name or equal" the County shall carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

Price Competition:

Assuring adequate price competition for various types of Contracts is accomplished as follows:

- a. **Construction and Maintenance:** Multiple written bids/proposals are required. Bids must come from responsible bidders and be responsive. State and federal provisions apply, and the insurance requirements are stringent.
- b. **Goods and Commodities:** Multiple bids/proposals are required for these purchases. Bids must come from responsible/responsive bidders. Bids must be submitted in the form and manner prescribed in the IFB/RFP. State and federal provisions apply, and the insurance requirements are stringent.
- c. **Bus Purchase:** Multiple written bids/proposals are required. Bids must come from responsible/responsive bidders. Bids for buses must conform to requirements set forth in the IFB/RFP except to the extent that they propose to furnish approved equals. At least two sealed bids will be required.
- d. **Transportation and Operational Services:** Procurements of this type are usually the subject of an RFP because factors other than price will be considered as a basis for an award.
- e. **Technology:** Multiple written bids/proposals are required. Bids must come from responsible/responsive bidders. State and federal provisions apply, and insurance requirements are stringent.
- f. **Services and Consultants:** Where selection is based exclusively on price, an IFB for services requires multiple bids/quotes/proposals. Proposals must be in writing. The IFB procedure may only be used for services and Consultants where the award will be exclusively on the basis of price. For professional services, where award will be based on factors other than price, the RFP procedures must be used. State and federal provisions apply, and insurance requirements are stringent.

Pre-Bid Conference: When the proposed Contract is for large purchases or construction, a pre-bid conference may be held about two (2) weeks before the bid opening. This is an opportunity for prospective bidders to ask questions about plans, specifications, and commercial language requirements.

Addenda: Changes in the procurement as a result of the pre-bid conference or that are initiated at the discretion of the County will be provided to all prospective bidders in the form of Addenda.

Bid Opening: Bid openings are open to the public. On the advertised day and at the scheduled time, the bids will be opened and read aloud, stating the name of the bidder and the amount of the bid. The Purchasing Manager or his/her designee will enter each bid and the amount of the bid deposit on a bid tabulation sheet that she will sign and certify. Bids that are received after the scheduled time of bid opening must be returned to the bidders unopened.

Observers at the bid opening should be advised to take notes if they want an instant record of the proceedings, and to state, if they want to be provided with an official copy of the bid tabulation. No copies of the bid tabulation are provided at the bid opening, nor can comments be made about the probability of award. If requested, an observer is permitted to look at bid(s) but is not permitted to handle bids at the time of bid opening.

Contract Award: The following measures will be taken to support any Contract award in response to an IFB.

- a. After the bid opening, the Purchasing Manager and or Transit Manager reviews the bid documents to determine the lowest Responsive and Responsible bidder. The Purchasing Manager will determine the responsibility of the lowest bidder. The Purchasing Manager will also review references and other pertinent information to ensure bidder responsibility.
- b. Non-Responsive and Non-Responsible bids shall be rejected. Late bids shall be returned to the bidder unopened. At all times, the County retains the right to reject any or all bids and will document the sound business reasons for the bid rejection.
- c. The low bidder may be allowed to withdraw, provided the bidder can identify and demonstrate an error in the bid.
- d. Award will be made by the authorized party as denoted in the St. Lucie County Purchasing Manual incorporated herein by reference. The apparent low bidder will be notified in writing of the intent to award, subject to the bidder's ability to meet the requirements of the IFB including Contract requirements.
- f. Contract awards based on a Contractor submitting a low bid shall be contingent on the Vendor/Contractor submitting satisfactory evidence of financial responsibility. Such evidence may take one of the following forms: audited financial statements and a Certificate of Responsibility from the Contractor, a previous financial disclosure dating from no more than six months prior to the IFB, combined with a certification from the Vendor/Contractor; a completed Contractor Responsibility Questionnaire form and certification from the Contractor.
- g. Before the Contractor can begin work, it must comply with the bid requirements by completing, executing, and returning the Contract that was included with the IFB.
- h. After the Contract has been formally awarded by the County, signed and returned with all necessary documentation (insurance certificates, performance bond) the Contractor is notified by the Purchasing Manager and/or Transit Manager to submit the signed agreement original(s) together with any commercial requirements. Notices to Proceed are signed by the Project Manager or his/her designee.

Contractor Selection Procedures: In addition to determining bidder/proposer responsibility when drafting procurement documents, the County shall consider the following criteria in Contractor selection: 1) Is technically qualified to perform the proposed work; 2) Has, or can secure adequate financial resources to perform the proposed work or deliver the proposed goods; 3) Is able to comply with the delivery or performance schedule, taking into account all existing business commitments; 4) Has a satisfactory record of past performance; 5) If selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts. Qualifications may include the length of time a firm has been in business, the expertise and experience of staff and the bidder's experience with projects of similar scope and size. Appropriate business references shall also be required.

Request for Proposals (RFP)/Competitive Negotiations

Competitive Negotiation is generally used when conditions are not appropriate for use of sealed bids. As costs become less important in relation to other factors driving the procurement, Competitive Negotiation becomes a more appropriate procurement tool. In Competitive Negotiation, proposals are requested from several sources. Negotiations are normally conducted with more than one of the sources submitting offers. Either a Fixed-Price or Cost Reimbursable type Contract is awarded in this type of procurement.

This method of procurement is the preferred method for acquisitions when one or more of the following factors are present:

- a. The desired goods or services cannot be precisely defined, described or standardized.
- b. The desired end product is conceptual in nature.
- c. Discussions concerning the technical aspects and price negotiations are intended.
- d. Offerors are to be given the opportunity to revise the price or technical aspects of their proposal.
- e. Price alone cannot be the determinative factor in award. Quality, qualifications, performance data, or other Contractual factors are to be considered in selecting the most advantageous offering.
- f. Artistic or aesthetic values supersede price as primary selection criteria.

Proposal Requirements: Publication of an RFP is required for this method of procurement Both the Request for Proposals and proposal are required to be in writing. All proposal evaluation factors will be identified along with their relative importance. The County will have a method in place for conducting the technical evaluation of the proposals received and for selecting awardees. The Community Services Department shall insure that the proposal is evaluated based on the requirements set forth in the proposal. No criteria may be used for evaluation that has not been set forth in the proposal. Proposals shall be publicly opened in the presence of one or more witnesses. Multiple proposals must be obtained from an adequate number of qualified sources (at least two).

Best Value: In determining which proposal is most advantageous, the County may award to the proposer whose proposal offers the County best business value to the County based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive the "best value". If the County elects to use the best value selection method as the basis for award, however, the solicitation must contain language that establishes that an award will be made on a "best value" basis. If utilizing the best value method the County will take into consideration the most beneficial combination of qualifications, services, and cost and who has met the requirements of the RFP.

Preparation of Request for Proposals (RFP): The RFP document will be organized to include: Information for proposers, Required Forms, including sufficient data to determine the responsibility of the proposer, Required Contract Clauses, the Contract Agreement, and scope of work or specifications.

Preparation of the scope of work or specifications, and any special terms and conditions is the responsibility of the transit staff working in conjunction with the Purchasing Manager. Specifications defining the items or services sought shall be outlined in detail. The specifications must be complete, adequate, and realistic. Specifications must not only describe the product but must also include reliability and quality assurance requirements. Any required criteria for inspecting, testing, and accepting the product shall also be included in the specification. The nature and extent of items and/or services requested will be limited to only that deemed necessary to meet the requirements of the intended purchase.

Specifications will encourage full and open competition and must not rule out one or more vendors or favor a particular vendor. Therefore, use of brand names in specifications is allowed solely for the purpose of providing a standard for quality performance. When requesting a "brand name or equal" the County shall carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

Questions: Although questions from firms in a position to make a proposal are permissible, *ex parte* conversations with Vendors/Contractors prior to the proposal being received should be confined to the mechanics of filing a proposal. Any questions that raise issues about the clarity of the RFP must be answered for all firms requesting the RFP through an addendum (see IFB procedure). Changes in the procurement specifications or requirements will be provided to all prospective proposers in the form of Addenda. Anyone making contact by or on behalf of a Vendor/Contractor (lobbying or selling) is required to disclose to the County. The County staff members are required to make a record of all contacts by non-disclosed lobbyists once an RFP has been undertaken.

Proposal Opening: Proposals must be in writing. Proposal openings are open to the public. Multiple proposals must be obtained from an adequate number of qualified sources (at least two). The evaluation process to be followed will be generally outlined in the RFP document. The evaluation factors will be identified in the RFP, along with their relative importance. Proposals that are received or submitted after the scheduled time due will be returned to the proposers unopened. Non-responsive and non-responsible proposals shall be rejected. In the event of protest the matter will be referred to the County Attorney for investigation. The County Administrator shall resolve all protests and his/her decision shall be final. Proposals must meet the following requirements:

- a. Construction procurements based on an RFP will generally be limited to Design-Build projects. Construction to a prescribed design (Design-Bid-Build) requires use of the IFB procedure. Multiple written proposals are required for an RFP. For contracting purposes, state and federal provisions apply and the insurance requirements are more or less stringent depending on the value of the project and other relevant factors.
- b. An RFP is generally not appropriate for generic items where price competition is available. For specialty items, proposals must be submitted in the form and manner prescribed in the RFP. Multiple written proposals are required, or sole-source procedures must be justified. State and federal provisions apply.
- c. Proposals for buses must conform to the requirements set forth in the RFP and such procurements will usually be more appropriate for an IFB. State and federal provisions apply.
- d. Multiple written proposals are required for Operational Services, or the Sole-Source procedures must be justified. State and federal provisions will apply. Contract forms have been posted. Because of the nature of this work, there are stringent insurance requirements.
- e. Technology: An RFP is generally not appropriate for generic items where price competition is available. For specialty items, like proprietary technology, proposals must be submitted in the form and manner prescribed in the RFP. Multiple bids/proposals are required for the product purchased, but this procedure is only appropriate for specialty items where selection will be based upon factors besides price. Multiple written proposals are required, or the Sole-Source procedures must be justified. State and federal provisions apply.
- e. Multiple proposals are required for consultant services. Proposals must be in writing. The RFP procedure may only be used for services and Consultants where the decision to award will be based upon factors other than price. As provided by the Brooks Act, in procuring architectural and engineering services, the award will be exclusively based on factors other than price. State and federal provisions apply, and the insurance requirements may be stringent depending on the type of work.
- f. To comply with The Brooks Act, proposals will be evaluated in all areas except price. Price will be provided in a separate sealed envelope. The County will then open the pricing envelope for the most qualified offeror and begin to negotiate price. Failing agreement on price, the County will begin negotiation with the next most qualified offeror until agreement is reached on price that is fair and reasonable. If the County is unable to reach agreement with any offeror, a new RFP must be issued. The County may not reopen negotiations with any offeror during the initial procurement process.

Post-Proposal Conference: When the proposed Contract is for large-scale purchase of goods or services, a conference may be held before proposals are received. This is an opportunity for prospective proposers to ask questions about the scope of work, specifications, or other commercial language requirements.

Negotiations: Contract negotiations are initiated with the proposer(s) identified to be within the competitive range, or with the proposer(s) that have submitted the superior proposal(s). Negotiations are conducted in accordance with guidelines stipulated in the RFP. When negotiations and the price/cost analysis are completed, a Contract award recommendation is presented to the proper authority for consideration. At all times the County retains the right to reject any or all proposals.

Contractor Selection Procedures: In addition to determining bidder/proposer responsibility when drafting procurement documents, The County shall consider the following criteria in Contractor selection: 1) Is technically qualified to perform the proposed work; 2) Has, or can secure adequate financial resources to perform the proposed work or deliver the proposed goods; 3) Is able to comply with the delivery or performance schedule, taking into account all existing business commitments; 4) Has a satisfactory record of past performance; 5) If selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts. Qualifications may include the length of time a firm has been in business, the expertise and experience of staff and the bidder's experience with projects of similar scope and size. Appropriate business references shall also be required.

Contract Award: As negotiated, proposals may be rejected, or a proposal may be withdrawn. If an agreement beneficial to the County is negotiated, and terms accepted by both sides, a Contract will be recommended for award. Award will be made in accordance with the St. Lucie County Purchasing Manual that is attached, based upon the most superior final proposal from a responsible firm. The Contract will be based on the form included in the RFP along with all required state and federal provisions. Scope of the work, prices, rates, and terms for payment will be described in detail as negotiated by the parties. After the Contract has been formally awarded by the County, signed and returned with all necessary documentation (insurance certificates, performance bond, etc.), the Contractor is notified by the Purchasing Manager and/or Transit Manager to submit the signed agreement original(s) together with any commercial requirements (bonds, insurance certificates). Notices to proceed are signed by the Project Manager or his/her designee. Before the Contractor can begin work, it must sign the Contract and comply with the Contract requirements. Once evaluated by a selection committee, staff shall make a recommendation of award to the responsive and qualified proposer whose proposal is determined to be the most advantages to the County. Evaluation of proposals shall be based on the award criteria, as set forth in the request for proposal.

- Veteran's Preference/Employment.

Basic Requirement: A contractor shall be required to comply with Chapter IV, 2.c. (1) (c) C4220.1F. Contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, and individual with a disability, or former employee.

Sole or Single Source (Non-Competitive Negotiations)

Non-Competitive Negotiation involves procurement through solicitation of a proposal from a Sole Source, or, after solicitation of several sources, competition is determined to be inadequate. A Contract amendment or change order that is not within the scope of the original Contract is considered a sole source procurement that must comply with this section.

Procurement by Non-Competitive Negotiation may be used only when procurement is infeasible under other methods and at least one of the following circumstances applies:

- The item is only available from a single source.
- A public exigency or emergency exists whereby the urgency for the requirement will not permit a delay resulting from competitive solicitation
- The FTA authorizes Non-Competitive Negotiation (for Federally funded Contracts only)
- After solicitation of several sources, competition is determined to be inadequate
- Infeasible to use small purchase, sealed bid, or competitive procurement
- Cost and price analysis are required

ATTACHMENT C

PROCUREMENT REQUIREMENTS FOR PURCHASES WITH FEDERAL GRANTS

Contract Clauses Required by 2 C.F.R. Section 200.327 and 2 C.F.R. Part 200, Appendix II

Federal regulations at 2 C.F.R. § 200.327 require that a non-Federal entity include certain provisions in contracts paid for with federal funding. The required provisions are described in Appendix II to 2 C.F.R. Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards).

1. Remedies.

- a. Standard: Contracts for more than the simplified acquisition threshold (currently, \$250,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, Paragraph A.
- b. Applicability: This provision is required for all federally funded contracts above the simplified acquisition threshold.

2. Termination for Cause and Convenience.

- a. All contracts in excess of \$10,000 must address termination for cause for convenience by the County, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, Paragraph B.
- b. Applicability: This provision is required for all federally funded contracts above \$10,000.

3. Equal Employment Opportunity.

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.2 must include the equal opportunity clause provided under 41 C.F.R. Section 60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2. C.F.R. Part 200, Appendix II, Paragraph C.
- b. Key Definitions.
 - (1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. Section 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Federal Government pursuant to an Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modifications thereof approved by the Federal Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 - (2) Construction Work. The regulation at 41 C.F.R. Section 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including

facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

- c. Applicability. This requirement applies to all procurements that meet the definition of a “federally assisted construction contract.”
- d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 14, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, and orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Federal Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order

11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or order of the Secretary of Labor issued pursuant to section 264 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

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

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. Davis-Bacon Act.

- a. Applicability. When required by the federal program legislation, prime construction contracts over \$2,000 must include a provision for compliance with the Davis-Bacon Act. With respect to FEMA grants, the Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. **Unless otherwise stated in a program's authorizing statute, it does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**
- b. Additional Requirements: If Davis-Bacon Act is applicable, the County must also do the following:

- (1) Place a copy of the Department of Labor's current prevailing wage determination in each solicitation. Contracts or subcontracts must be awarded on the condition that the prevailing wage determination is accepted. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
 - (2) Include a provision for compliance with the Copeland "Anti-Kickback" Act for all contracts subject to the Davis-Bacon Act. According to 29 C.F.R. § 5.5(a)(5), the regulatory requirements for the Copeland "Anti-Kickback" Act are incorporated by reference into the required contract provision, so a separate contract provision is not necessary. However, the County may include a separate contract provision specific to the Copeland "Anti-Kickback" Act.
 - (3) Per Department of Labor's implementing regulations for the Davis-Bacon Act, the County's contractor and any subcontractors are required to insert, or incorporate by reference, the clauses contained at 29 C.F.R. § 5.5(a)(1)-(10) into any subcontracts.
 - (4) Follow the other requirements of the Davis-Bacon Act and implementing regulations.
- c. Required Language: If applicable per the standard described above, the County must include the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full into all applicable contracts, and all applicable contractors must include these provisions in full in any subcontracts.

5. Copeland Anti-Kickback Act Compliance with the Copeland "Anti-Kickback Act.

- a. Applicability. All prime construction contracts above \$2,000 for which the Davis-Bacon Act also applies. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.
- b. Additional Requirements.
 - (1) Include a provision for compliance with the Copeland "Anti-Kickback" Act. According to the Davis-Bacon Act implementing regulations, the requirements for the Copeland "Anti-Kickback" Act are incorporated into the required contract provision for the Davis-Bacon Act by reference. Therefore, a separate contract provision is not necessary. However, the County may include a separate contract provision specific to the Copeland "Anti-Kickback" Act with language suggested below.
 - (2) The Copeland "Anti-Kickback Act" prohibits each contractor or subcontractor from any form of persuading a person employed in construction, completion, or repair of public work to give up any part of their rightful compensation. The County must report all suspected or reported violations of the Copeland "Anti-Kickback Act" to FEMA.
 - (3) Each contractor and subcontractor must provide weekly reports of the wages paid during the prior week's payroll period to each employee covered by the "Copeland Anti-Kickback" Act and the Davis-Bacon Act. The reports must be delivered to a representative of a federal or state agency in charge at the building or work site by the contractor or subcontractor within seven days of the payroll period's payment date.
 - (4) Follow the other requirements of the Copeland "Anti-Kickback" Act and implementing regulations.
- c. Suggested Language.

Compliance with the Copeland "Anti-Kickback" Act. Contractor.

- (1) Contractor. The contractor shall comply with 18 U.S.C. Section 874, 40 U.S.C. Section 3145, and the requirements of 29 C.F.R. pt.3, as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontractors. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. Section 5.12.

6. Contract Work Hours and Safety Standards Act.

- a. Applicability. This requirement applies to all procurements over \$100,000 that involve the employment of mechanics, laborers, and construction work. It does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transmission of intelligence.
- b. Additional Requirements.
- (1) If applicable per the standard described above, the County must include the provisions at 29 C.F.R. § 5.5(b)(1)-(4) (provided below), verbatim, into all applicable contracts, and all applicable contractors must include these provisions, in full, into any subcontracts.
 - (2) In addition to the required language from 29 C.F.R. § 5.5(b)(1)-(4), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any other statutes cited in 29 C.F.R. § 5.1, the County must also insert a clause meeting the requirements of 29 C.F.R. § 5.5(c).
- c. Required Language. The required language 29 C.F.R. § 5.5(b)(1)-(4) is provided below:

Compliance with the Contract Work and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States, for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wage required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provide in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

7. Rights to Inventions Made Under a Contract or Agreement.

- a. Standard. If the federal award meets the definition of "funding agreement" under 37 C.F.R. Section 401.2(a) and the County wishes to enter into a contract with a small business firm or

nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the County must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organization and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulation issued by FEMA. See 2 C.F.R. Part 200, Appendix II, Paragraph F.

- b. Applicability. This provision does not apply to all FEMA grant and cooperative agreement programs. The County should refer to applicable Notice of Funding Opportunity or other program guidance or contact their applicable grant representative to determine if this provision is required for the procurement. However, the Rights to Inventions Made Under a Contract or Agreement clause is not required for procurements under FEMA’s Public Assistance Program.
- c. Key Definition. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8. Clean Air Act and the Federal Water Pollution Control Act.

- a. Standard. Contracts in excess of \$150,000 must contain a provision requiring the contractor to comply with the Clean Air Act (42 U.S.C. Section 7401-7571q) and the Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II Paragraph G.
- b. Suggested Language. The following clauses shall be included in applicable contracts:

Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.
- (2) The contractor agrees to report each violation to the Florida Department of Environmental Protection (“FDEP”) and understands and agrees that FDEP will, in turn, report each violation as required to assure notification to the County, FEMA, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Florida Department of Environmental Protection (“FDEP”) and understands and agrees that FDEP will in turn report each violation as required to assure notification to the County and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 finance in whole or in part with Federal assistance provided by FEMA.

9. Debarment and Suspension.

- a. Applicability. This requirement applies to all contracts and subcontracts for \$25,000 or more, all contracts that require the consent of an official of a federal agency, and all contracts for federally required audit services. However, even for procurements under \$25,000, the County must comply with the regulation requiring that it only award contracts to responsible vendors.

b. Additional Requirements.

- (1) The debarment and suspension regulations restrict awards, subawards, contracts, and subcontracts with parties that are debarred, suspended, or otherwise excluded, or declared ineligible for participation in federal assistance programs and activities.
 - (2) If applicable, a contract or subcontract must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM). SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties that are debarred, suspended, or otherwise excluded, or declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM Exclusions can be accessed at www.sam.gov.
 - (3) In general, an "excluded" party cannot receive a federal grant award or a contract considered to be a "covered transaction," which includes parties that receive federal funding indirectly such as subawards and subcontracts. The key to the exclusion is whether there is a covered transaction. A covered transaction is a non-procurement transaction at either a primary or secondary tier.
 - (4) Specifically, a covered transaction includes the following contracts for goods or services under FEMA grant and cooperative agreement programs:
 - The contract is at least \$25,000.
 - The contract requires the approval of FEMA, regardless of amount.
 - The contract is for federally required audit services.
 - It is a subcontract for \$25,000 or more.
- c. Suggested Language. The following debarment and suspension clause incorporates an optional method of verifying that contractors are not excluded or disqualified. It shall be included in all applicable contracts.

Suspension and Debarment.

- (1) This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. Part 180, subpart C and 2C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the County, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement for a contract clause and certification applies to contracts and subcontract in excess of \$100,000.
- b. Suggested Language. The following Byrd Anti-Lobbying contract clause shall be included in any applicable contract:

Byrd Anti-Lobbying Amendment, 31 U.S.C. Section 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification below. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

APPENDIX A. 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1953). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Representative

Name and Title of Contractor’s Authorized Official

Date

11. Procurement of Recovered Materials.

- a. Applicability. Required for all procurements over \$10,000.
- b. Standard. The County and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Publ. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery act at 42 U.S.C. Section 6962). See 2 C.F.R. Part 200, Appendix II, Paragraph J; 2 C.F.R. Section 200.323. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceed \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in EDP guidelines.
- c. Suggested Language. The following provision shall be included in contracts meeting the above thresholds:

Procurement of Recovered Materials.

- (1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired ---
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule.
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm.comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

12. Prohibition on Contracting for Covered Telecommunications Equipment or Services

- a. Standard. Effective August 13, 2020, the County, as well as their contractors and subcontractors, may not obligate or expend any federal award funds to:
 - (1) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.
 - (2) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
 - (3) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
- b. Applicability. This provision is required for all contracts paid for with federal funding awarded after November 12, 2020.
- c. Suggested Language for FEMA-Funded Contracts (FEMA-specific language can be revised for other programs).

Prohibition on Contracting for Covered Telecommunications Equipment or Services

- (a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country;

covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) *Prohibitions.*

- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- (2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Exceptions.*

- (1) This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.

- (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) *Reporting requirement.*

(1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

13. Domestic Preferences for Procurements.

- a. Standard. As appropriate, and to the extent consistent with law, the County should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.
- b. Applicability. This provision is required for all contracts paid for with federal funding awarded after November 12, 2020.
- c. Suggested Language.

Domestic Preference for Procurements

(1) As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

(2) For purposes of this clause:

- i. *Produced in the United States* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- ii. *Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

14. Additional Recommend Clauses for FEMA-Funded Contract.

- a. Changes. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describe how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.
- b. Access to Records. The County and its contractors and subcontractors must give the Department of Homeland Security (DHS) and FEMA access to records associated with their awards during the federally required record retention period and as long as the records are retained. All parties agree to comply with DHS provisions about accessing people, places, and things related to the federal financial award as necessary or as required by DHS regulations or other applicable laws and policies. Additionally, for contracts entered into after August 1, 2017, under a major disaster or emergency declaration under Titles IV or V of the Robert T. Stafford Disaster Relief Act, FEMA is prohibited from funding any contracts that prevent audits or internal reviews by the FEMA Administrator or Comptroller General.
 - i. Suggested Language.

Access to Records. The following access to records requirements apply to this contract:

- 1) The Contractor agrees to provide the County, the Florida Division of Emergency Management, the FEMA Administrator, the Comptroller of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
 - 2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - 3) The Contractor agrees to provide the FEMA Administrator or his authorized representative's access to construction or other work sites pertaining to the work being completed under this contract.
 - 4) In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the County and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- c. DHS Seal, Logo, and Flags. The County and its contractors must obtain permission before using the DHS seal(s), logos, crests, reproductions of flags, or likenesses of DHS agency officials.
 - (1) Suggested Language. "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The contractor shall include this provision in any subcontracts."

- d. Compliance with Federal Law, Regulations, and Executive Orders. The County and its contractors are required to comply with all federal laws, regulations, and executive orders. Additionally, they must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.
- (1) Suggested Language. “This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”
- e. No Obligation by Federal Government. FEMA is not a party to any transaction between a NFE and its contractor. Therefore, FEMA is not subject to any obligations or liable to any party for any matter relating to the contract between an NFE and its contractor.
- (1) Suggested Language. “The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”
- f. Program Fraud and False or Fraudulent Statements or Related Acts. The County must comply with the requirements of the False Claims Act which prohibits submitting false or fraudulent claims for payment to the federal government. As a part of the contract with the County, contractors must acknowledge that 31 U.S.C. Chap. 38, regarding administrative remedies for false claims and statements, applies to their actions under their contract.
- (1) Suggested Language. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.
- g. Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.
- (1) Suggested Language.
If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:
- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- h. Copy and Data Rights. The County is required by 2 C.F.R. § 200.315 to provide certain licenses with respect to copyright and data to the federal awarding agency. 2 C.F.R. § 200.315(b) provides to the federal awarding agency “a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use [any work that is subject to copyright] for federal purposes, and to authorize others to do so.” 2 C.F.R. § 200.315(d) provides to the federal government the rights to “obtain, reproduce, publish, or otherwise use” data produced under a federal award and to authorize others to do the same.
- (2) Suggested Language. “License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the County, a paid-up, royalty-free, nonexclusive,

irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the County or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to the County data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the (insert name of the non-federal entity).”