

 <p>MESA COUNTY</p> <p>MESA COUNTY FEDERAL TRANSIT ADMINISTRATION (FTA) PROCUREMENT POLICY AND PROCEDURES</p>	Topic: Procurement
	Effective: October 1, 2018
	Issued By: Mesa County Regional Transportation Planning Office
	Approved By: Board of County Commissioners

SECTION 1: PURCHASING WITH FEDERAL TRANSIT ADMINISTRATION (FTA) FUNDS

1.1 Purpose

The purpose of this Federal Transit Administration (FTA) Procurement Policy and Procedures document is to provide additional requirements related to FTA funded procurements as reflected in Circular 4220.1F as amended. This document is in coordination with and addition to the Mesa County Procurement Policy and Procedures.

Every FTA grant has a section relating to procurement, previously called the Common Rule and now called the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (often referred to as the “Uniform Requirements” and hereinafter referred to as the “Uniform Requirements) found at 2 CFR Part 200. This section is the same for all Federal grantor agencies. However, departments and buyers should review the specific requirements, because some agencies include added provisions which must be followed. County personnel involved in FTA funded purchasing activity should consult FTA C4220.1F and the Best Practices Manual, which can be found at: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

1.2 Scope

This FTA Procurement Policy and Procedures document applies to the procurement of all materials, supplies, equipment and services required by the County, including capital expenditures with respect to FTA funds.

This document shall apply to all expenditures of FTA funds by any County Department or agency for public purchasing. When the procurement involves the expenditure of state or federal assistance or contract funds, the purchase shall be conducted in accordance with applicable state or federal laws/regulations. If FTA requirements conflict with state or local requirements, the County will promptly provide written notification to the FTA Regional Counsel and work with FTA to make appropriate arrangements to proceed with the project, if possible.

Sub-recipients and sub-awards: Sub-awards shall comply with Title 2 CFR - Grants and Agreements. The County may at times award pass-through federal funds to eligible community partners for the purpose of providing support for the performance of any portion of the substantive project or program for which the County receives the award. Sub-awards of federal funds passed through to community

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partners are subject to the FTA Procurement Policy and Procedures insofar as goods and services are purchased with the funds.

All County employees are governed by the provisions of this FTA Procurement Policy and Procedures when directly or indirectly involved in a FTA procurement transaction. Violation of these provisions is grounds for disciplinary action, up to and including termination of employment and/or referral for criminal action.

1.3 Policies

- (1) The County is responsible for purchasing high quality goods, materials, equipment and services at reasonable cost in a timely manner through a competitive bid/proposal process.
- (2) The County is responsible to ensure fair and equitable treatment of all persons involved in providing goods, services and/or construction to the County.
- (3) The County is responsible for maintaining an open and competitive environment to all qualified vendors where sellers have access to County business and that all purchasing actions are conducted fairly and impartially in the best interest of Mesa County.
- (4) Competitive sealed bids or competitive proposals, as appropriate, shall be used to facilitate contracts with nongovernmental contractors for the purchase or lease of goods, services and/or construction in accordance with the limitations described herein.
- (5) It is prohibited to disclose the identity or information derived from competing proposals to any bidder or offeror prior to the public opening of bids.
- (6) All capital infrastructure shall be maintained at a level adequate to protect the County's investment and to minimize future maintenance and replacement costs.
- (7) Department Heads/Elected Officials are responsible for determining how to best utilize FTA funds appropriated to Regional Transportation Planning Office (RTPO) by the Board of County Commissioners (BOCC).
- (8) The disposal of County tangible property shall be through an open competitive process to the extent possible. The County may donate surplus property to other governmental entities or nonprofit organizations, if it is in the best interest of the County, as approved by the County Administrator or his designee. If tangible property has reached the end of its useful life the appropriate department head or elected official may authorize disposal of the property in the manner most beneficial to the County and the disposal will be coordinated through the Facilities Department. The previous sentence notwithstanding, real property or equipment that was purchased with Federal financial assistance must be coordinated with and approved by the Federal agency providing that financial assistance and disposed of in accordance with the rules and regulations applicable to that financial assistance (See Section 10 Disposal of Surplus Property).
- (9) Any personal gain other than wages and benefits realized through public employment is a breach of public trust and appropriate sanctions will be imposed.

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- (10) To the extent that violations of ethical standards of conduct constitute violations of state or federal laws, sanctions shall be imposed as provided by law.
- (11) The County will comply with all federal requirements, unless County policies are more stringent and do not conflict with federal requirements. As noted above, if Federal Transit Administration (FTA) requirements conflict with state or local requirements, the County will promptly provide written notification to the FTA Regional Counsel and work with FTA to make appropriate arrangements to proceed with the project, if possible.

1.4 Purchasing Authority

- (1) Board of County Commissioners.
The responsibility for all purchases made by the County is held by the Board of County Commissioners. The Board of County Commissioners, under this FTA Procurement Policy and Procedures document, authorizes the County Administrator to establish procurement rules and regulations for all County personnel.
- (2) County Administrator
The County Administrator is responsible for ensuring compliance with the FTA Procurement Policy and Procedures. The County Administrator shall establish the procedures for the procurement of all goods and services and such procedures shall be applicable to all County employees who are directly or indirectly involved in a FTA Procurement transaction.
- (3) RTPO Department Head
By authority of the County Administrator, the RTPO Department Head or their designated representatives shall be delegated purchasing authority and responsibility as set forth.
 - a) RTPO Department Head along with the Purchasing Department are given the responsibility of ensuring that designated purchasing personnel in their department are knowledgeable of and fully understand the County and FTA Procurement Policy and Procedures established by the County Administrator.
 - b) RTPO Department Head along with the Purchasing Department may delegate purchasing authority to their employees as required to facilitate the activities within their scope of responsibility. However, the ultimate responsibility remains with the RTPO Department for the activities of their subordinate employees.
 - c) By the authority of the County Administrator, the authorized staff shall be responsible for the daily operations of the purchasing transactions. The County Administrator shall have the authority and power to ensure compliance.

1.5 Ethics in Public Contracting

The objectives of public procurement include conserving public funds and inspiring public confidence. Any erosion of honesty, integrity and openness is more injurious to public procurement than to most other public pursuits. The appearance of a conflict of interest may be as harmful to public confidence in government as an actual case of misconduct. For that reason, all personnel involved directly or indirectly in procurement transactions, from the original purchase to the ultimate disposal, must be guided by the highest standards of ethical conduct.

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- (1) Employee Requirements: No public employee having official responsibility for a procurement transaction shall represent the County in that transaction when the employee knows that:
- a) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction.
 - b) The employee, the employee's partner or any member of the employee's immediate family holds a position with a bidder, offeror or contractor, such as officer, director, trustee or partner, has a personal and substantial participation in the transaction or owns or controls more than five percent of the firm.
 - c) The employee, the employee's partner or any member of the employee's immediate family holds a position with a bidder, offeror or contractor, such as officer, director, trustee or partner, has a personal and substantial participation in the transaction or owns or controls more than five percent of the firm.
 - d) The employee, the employee's partner or any member of the employee's immediate family has a pecuniary interest in or arising from the transaction.
 - e) The employee, the employee's partner or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror or contractor.
 - f) It is a breach of ethical standards for any employee or public official to knowingly use confidential information for his or her personal gain or the gain of others.
 - g) It is a breach of ethical standards for any employee or public official to coerce personal monetary discounts from vendors based on employment with Mesa County.
 - h) No officer or employee shall solicit or receive any pay, commission, money, or thing of value, or derive any benefit, profit or advantage, directly or indirectly, from or by reason of employment by the County, except his lawful compensation or salary as such officer or employee. The officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts. The County may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
 - i) State statutes codified at C.R.S. § 31-4-401 et seq. and § 24-18-101 et seq. allow the County to accept a bid, quotation or proposal which complies with the County's procurement policies and procedures, and is the lowest received in a competitive open process, even if the bidder is an employee or officer of the County, if the employee or officer has disclosed real or potential conflicts of interest and has abstained from voting on related issues. To qualify, an employee or officer shall file a public disclosure record (PDR) outlining the individual's financial interest. Completed forms shall constitute a public record filed in the office of the County Clerk.
 - ii) Notwithstanding the preceding, as provided in the FTA Master Agreement, no

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employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award. The County must notify FTA of any conflict of interest, real or apparent, whether or not in compliance with state law, and advise of methods to be taken to avoid, neutralize, or mitigate such contracts before contract solicitation or award, as applicable.

(2) Vendor Requirements

- a) No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services, present or promised.
- b) All bidders, offerors, contractors or subcontractors shall complete a disclosure of interest form to inform of any personal interest of any public official with respect to any County procurement. Failure to make the required disclosure may result in disqualification, disbarment, suspension from bidding, rescission of contracts and other sanctions as appropriate.
- c) No contractor or subcontractor shall give, demand or receive from any suppliers, subcontractors or competitors any bribe or kickback or anything of value in return for participation in a procurement transaction or agreeing not to compete in a transaction.
- d) Architects or engineers contracted by the County may not furnish building materials, supplies or equipment for any structure on which they are providing professional services.
- e) Gratuities. It is a breach of ethical standards for any person to offer, give or agree to give any employee or public official a gratuity or offer of employment or employment in connection with any decision or recommendation concerning a possible or actual purchase by and/or on behalf of the County.
- f) Kickbacks. It is unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract and solicitation thereof.
- g) Excluded from competing. In order to ensure objective contractor performance and eliminate unfair competition advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

1.6 File Documentation

Every procurement; bid, RFP, quote, sole source, purchase order needs to contain the details of the procurement history and procedures to assure that these elements are contained in each FTA funded

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procurement file. This includes written or oral quotes, bids, specification and independent cost analysis before and after award, and documentation of the responsibility of the vendor. A Written History of Procurement form that details the file documentation requirements is included as Attachment 14.

Documentation includes, but is not limited to:

- (1) Appropriate checklist for each type of procurement (See Attachments 4 through 11)
- (2) Procurement Method Used:
 - Provide the rationale for the method of procurement used for each contract and should be documented by Purchasing.
- (3) Contract Type:
 - Provide the reason for selecting the contract type used (fixed price, cost reimbursement, etc.)
- (4) Contractor evaluated for responsibility (See Attachment 12)
 - Integrity. The contractor's integrity;
 - Public Policy. The contractor's compliance with public policy;
 - Past Performance. The contractor's past performance;
 - Financial and Technical Resources. The contractor's financial and technical resources, and;
 - Debarment/Suspension. Contractor's status with respect to DOT regulations, Governmentwide Debarment and Suspension (Nonprocurement), 49 CFR Part 29.[FTA C 4220.1F, VI, 8.b.]
- (5) Contractor Selection:
 - Provide the reason for the selection or rejection of the contractor for all procurements exceeding the small purchase threshold.
- (6) Cost or Price:
 - An evaluation and justification for a contract cost or price.

Prior to finalizing a procurement, RTPO Staff and Purchasing Agent will review the procurement file to determine if all elements are present. See also FTA Circular 4220.1F, Ch. III.3(d).

1.7 Prohibited or Restricted Contract Types

The following contract types are restricted or prohibited:

- (1) Cost Plus a Percentage of Cost—Prohibited. The Uniform Requirements expressly prohibit the use of the cost plus a percentage of cost and cost plus a percentage of construction cost methods of contracting.
- (2) Time and Materials—Restricted. The Uniform Requirements permit the use of time and material contracts only:
 - a) When to Use: After determining that no other contract type is suitable; and
 - b) Firm Ceiling Price: The contract shall specify a ceiling price that the contractor may not exceed except at its own risk.
- (3) Utilizing Tag-ons as a Procurement Method – Restricted. FTA describes tag on as the use

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of another governmental agency's contract when there is no provision for the purchase of additional specified quantity by another agency. Such procurements must comply with FTA Circular 4220.1F, as amended and FTA guidance.

Grantees are encouraged to utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document.

[FTA C4220.1F, Ch. V, 7.a \(2\) \(a\)](#)

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

- (4) Rolling Stock and Replacement Parts. Contracts for rolling stock and replacement parts, inclusive of options, must be limited to no more than five (5) years without prior written approval from FTA when FTA funds are involved. All other types of contracts, the file must contain evidence that the contract term is based on sound business judgment.

1.8 Specification Related

Specifications and qualification requirements must be reviewed to avoid placing unreasonable requirements on firms in order to compete for contract opportunities. Examples of unreasonable requirements include:

- (1) Excessive Qualifications: Imposing unreasonable business requirements for bidders or offerors.
- (2) Unnecessary Experience: Imposing unnecessary experience requirements for bidders and offerors.
- (3) Improper Prequalification: Using prequalification procedures that conflict with the prequalification standards of the County. The County does not require prequalification.
- (4) Retainer Contract: Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
- (5) Excessive Bonding: To encourage greater contractor participation in FTA assisted projects, FTA does not require the County to impose bonding requirements on its third party contractors other than construction bonding specified by the Uniform Requirements and this circular for construction. FTA discourages unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by disadvantaged business enterprises. Bond companies exercise their discretion and assure their profits primarily by declining to undertake excessive risks. Consequently many

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bidders have limited “bonding capacity.” Unnecessary performance bonding requirements reduce a prospective bidder’s or offeror’s capability to bid or offer a proposal on bonded work. Small businesses with short histories may have particular difficulty obtaining bonds as may be specified. Nevertheless, even though bonding can be expensive, FTA recognizes that the County might find bid, performance, or payment bonds to be desirable. Because bonding requirements can limit contractor participation, FTA expects the recipient’s bonding requirements to be reasonable and not unduly restrictive. FTA, however, will not challenge State or local bonding requirements as unreasonably restrictive of competition, even though they might exceed Federal requirements. Nevertheless, if the County’s bonding policies result in such “excessive bonding” that it would violate the Uniform Requirements as restrictive of competition, FTA will not provide Federal assistance for those procurements. Thus if the recipient’s bonding policies far exceed those described in this subparagraph or are permissible under State or local law, the County should obtain FTA’s written concurrence to ensure the availability of Federal assistance for the project.

- (6) Brand Name Specifications: When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of an item. This should include the requirement that in these instances, the specific features of the named brand which must be met by offerors shall be clearly stated with approved equal language (See also Section 4: Specifications).

1.9 Micro and Small Purchases

When purchases are funded by FTA the micro purchase limit is \$10,000, however the County’s threshold is set at \$5,000. Competition is not required for micro purchases but documentation must show the price is fair and reasonable and how the determination was derived. Review of previous procurements to avoid purchase of unnecessary or duplicative items is required. Larger procurements are prohibited from being split to avoid competition and when competition is not obtained, the County is required to equitably distribute among qualified suppliers. However, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase (2 CFR 200.318(d)). All purchases over \$10,000 to \$100,000 are considered small purchases, and must include all documentation on quotes received from at least three qualified sources and document in the file that the price is fair and reasonable. The County must accept products or services using the metric system.

1.10 Economic Purchase – Lease vs. Purchase Analysis

Lease vs. purchase alternatives – The lease/purchase analysis should be undertaken to determine the most cost effective method of procurement. The decision to lease or buy should be made based on the results of the analysis. It is usually less economical to lease equipment than to purchase it. However, there are some instances where this is not true. For example, short-term leases of equipment which is required for a short time or for a unique task may be reasonable and economically sound. It may also be advisable to lease equipment that undergoes rapid technological change such as personal computers and other IT related equipment. In some cases, it is easier to have equipment maintained if it is leased. But long term leases and leases for items that should be purchased and capitalized but cannot be because of budget constraints are not economically prudent. Before acquisition of a piece of equipment is made a lease vs. purchase analysis should be made. The analysis should be appropriate to the size and complexity of the procurement. In determining whether the lease of equipment is feasible, the following factors must be considered:

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- Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
- Technological obsolescence of the equipment;
- Financial and operating advantages of alternative types and makes of equipment;
- Total rental cost for the estimated period of use;
- Net purchase price, if acquired by purchase;
- Transportation and installation costs;
- Maintenance, storage and other service costs;
- Trade-in or salvage value;
- Imputed interest costs; and
- Availability of a servicing facility especially for highly complex equipment (can the Agency service the equipment if it is purchased).

1.11 Architect and Engineer Selection/Brooks Act

When Architectural and Engineering (A&E) requests for proposal are done for any FTA funded project then cost will not be used as a rating criteria but the selection will be made on qualification only. The highest ranked firm will then be negotiated with. If the County fails to enter into an agreement with the highest ranked firm, negotiations will cease with that firm and the next highest ranked firm will be negotiated with. In no circumstance is the first firm to be re-contacted for negotiations.

Selection of Contractor - FTA Circular 4220.1F requires the procurement of A&E services in accordance with the "qualifications based procurement methods" of the Brooks Act. The "A&E services" that must be procured according to the Brooks Act procedures are defined in two statutes: 40 U.S.C. Section 1102 and 49 U.S.C. Section 5325(b). Both of these statutes must be taken into consideration when deciding what constitutes "A&E services." The easiest way to conceptualize the requirements of these two statutes is to first apply the definition in 49 U.S.C. Section 5325(b) and determine if the services are "program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services." If the services fall into one of these categories, they are services that must be procured pursuant to the Brooks Act. If the services do not fall into one of these categories, then the three-part test from 40 USC 1102 must be applied. The three-part test from that statute states:

"The term "architectural and engineering services" means-

- (a) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
- (b) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- (c) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning,

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program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services.”

This is the portion of A&E services that relies on indicators such as licensing and whether A&E firms normally do the specific sort of task under consideration. If the function fits within this definition of A&E services, ‘Brooks Act procedures’ apply.

The Brooks Act (40 USC 1102) defines the competitive procedures to be used in the selection of A&E firms, and these procedures will apply to grantee procurements of A&E services unless the grantee's State has adopted formal procurement procedures for A&E services, in which case the State procedures will govern. A qualifications-based selection process must be followed for all A&E procurements regardless of dollar value.

The Brooks Act requires a *qualifications based procurement method* for the selection of A&E firms. Price is excluded as an evaluation factor, and negotiations are conducted with the most qualified firm only. If an agreement cannot be reached on price with the most qualified firm, *negotiations are formally terminated with that firm, thereby rejecting that firm’s proposal, and the grantee cannot return to this firm at a later date to resume negotiations.* Negotiations are then conducted with the next most qualified firm. This process continues until a negotiated agreement is reached which the grantee considers to be fair and reasonable.

1.12 Design-Bid-Build

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

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

1.13 Design-Build

- (1) Design-Build. The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction.
- (2) Procurement Method Determined by Value. First, the County must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the County to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

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- (3) Construction Predominant. The construction costs of a design-build project are usually predominant so that the County would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based Brooks Act procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.
- (4) Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the Brooks Act.

[FTA C 4220.1F Pg. VI-16](#)

- (5) Selection Processes. The County may structure its design-build procurement using one or more steps as described below:
- a) One-Step Method. The County may undertake its design-build procurement in a single step.
 - b) Two-Step Method. Another procurement method the County may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m. This method consists of:
 - i. Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors' technical qualifications and technical approach to the project.

The County may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - ii. Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.

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

1.14 Exercise of Options

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When purchasing using the exercising of options. The procedures include the following:

- (1) Option quantities must be evaluated to determine initial contract award; if not evaluated they cannot be exercised later unless a sole source justification is processed.
- (2) When exercising options in a contract that is being “piggybacked,” ensure it is in accordance with the contract and that the price is better than prices available in the market or is more advantageous at the time the option is exercised. A price analysis (market survey) is not necessary when exercising options in a contract that the County has itself awarded. The County will ensure any “piggybacking” complies with the Piggybacking Worksheet (Attachment 1).
- (3) Options not evaluated as part of the price evaluation of offers must be treated as sole source awards.

1.15 Advance Payments

Advance payments are payments made to a contractor before the contractor incurs contract costs. The County may use its local share funds for advance payments. However, if there is no automatic preaward authority for the project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other preaward authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

[FTA C 4220.1F Page IV-11](#)

- (1) Use of FTA Assistance Prohibited. The County may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which payments would be attributable.
- (2) Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the County can provide sound business reasons for doing so and has obtained FTA’s advance written concurrence. If the County seeks to use FTA assistance to support advance payments, the County should contact the regional office administering the project to obtain FTA concurrence.
- (3) Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA’s concurrence in the use of FTA or local share funds.
- (4) Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the County may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

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

1.16 Progress Payments

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

- (1) Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The County should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.
- (2) Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
- (3) Percentage of Completion Method. The Uniform Requirements require that any progress payments for construction contracts be made on a percentage of completion method described therein. The County, however, may not make progress payments for other than construction contracts based on this percentage method.

1.17 Liquidated Damages

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

1.18 Violation or Breach

Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.

1.19 Suspension of Work

FTA may require provisions pertaining to suspension of work.

1.20 Termination Clauses

The County will ensure that all contracts above \$10,000 contain remedies for breach of contract as well as termination for cause and termination for convenience provisions.

1.21 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 FTA assisted property. The County has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the County should conduct its revenue contracting as follows:

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

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1.22 Independent Cost Estimate and Cost or Price Analysis

In conjunction with all FTA funded purchases, a cost or price analysis will be performed for all procurements over the Simplified Acquisition Threshold (2 CFR 200.88 as amended). This includes:

- (1) An Independent Cost Estimate (ICE) of the amount of the purchase must be made prior to receiving quotes, bids or proposals. This shall be retained in the procurement file. (See also Section 8 Independent Cost Estimates)
- (2) Cost and Price Analysis. The Uniform Requirements mandate that the County to perform a cost or price analysis in connection with every procurement action over the simplified acquisition threshold, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the County must make independent estimates before receiving bids or proposals.
 - a) Cost Analysis. The County must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The County must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, such as professional consulting and A&E contracts, and so forth. The County is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The County, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market

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

Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.

- i) Profit. FTA expects the County to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the County performs or acquires a cost analysis. To establish a fair and reasonable profit, the County needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- ii) Price Analysis. If the County determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. As discussed previously, the price analysis for micro-purchases may be limited. Similarly, the County may use an abbreviated price analysis for small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

1.23 Organizational Conflict of Interest

The County will seek to avoid organizational conflicts of interest. When services are requested by FTA funded departments we will review the requests in light of the potential for a conflict.

An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or sub-agreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or sub-recipient or impair its objectivity in performing the contract work.

49 CFR § 18.36(c)(v) and 49 CFR § 19.43 prohibit organizational conflicts of interest as restrictive of competition. Section 19.43 further states as follows:

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The County shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor

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performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the County, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the County. Any and all bids or offers may be rejected when it is in the County's interest to do so.

1.24 Responsibility of Vendors

The County will perform an evaluation of the responsibility of vendors utilizing the Responsibility Determination Form included as Attachment 12. This will be in accordance with the County Procurement Policy.

1.25 Veterans Employment

The County shall ensure that contracts require contractors working on a capital project funded by FTA 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, an individual with a disability, or former employee.

1.26 Arbitrary Action

The County shall ensure there was no arbitrary action in the procurement process (An example is when an award is made to other than the contractor who most satisfied all the grantee's requirements as specified in the solicitation and as evaluated by staff).

In addition, prior to issuance of any Purchase Order or contract the County will verify that the vendor is not listed on the Excluded Parties List System (<https://www.sam.gov/portal/SAM/#1>). Information on the search results will be placed in the purchasing file. This is applicable to all FTA funded purchases above the micro purchase threshold.

1.27 Leasing of Federally Funded Assets

The County shall receive written concurrence from FTA prior to leasing any FTA-funded assets to others. Assets may include buses, buildings and equipment. This is accomplished yearly within the Section 5307 grant application in TrAMS by stating which contractor is currently leasing the assets. If a new contractor will begin operations for Grand Valley Transit during an active 5307 grant, the County shall receive written concurrence from FTA prior to entering into the contract with the new contractor.

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SECTION 2: FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS

The County must comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements.

2.1 Uniform Requirements (2 CFR Part 200)

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The Office of Management and Budget's Uniform Requirements (2 CFR § 200), which became effective on December 26, 2014, in some cases supersedes the FTA's guidance contained in Circular 4220.1F as the FTA guidance has not yet been updated to reflect these new government-wide changes.

2.2 Federal Acquisition Regulation

The Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, does not apply to federally assisted procurements, absent Federal laws or regulations to the contrary. In the case of FTA programs, FAR Part 31 cost principles apply to grants and cooperative agreements with private for-profit entities. Audits of A&E services listed in 49 U.S.C. Section 5325 must be carried out under FAR Part 31 cost principles. In other circumstances, in the absence of specific guidance for federally assisted projects, other FAR standards might prove useful if the recipient's circumstances are suitable for application of a specific FAR provision under consideration.

2.3 Other Federal Requirements

In addition to the Uniform Requirements, each FTA recipient must comply with applicable Federal transit laws and implementing regulations not addressed in the Uniform Requirements, and with other Federal statutes and regulations that affect what a recipient may acquire.

- (1) Compilation in the Master Agreement. Citations to most Federal requirements are included in the latest edition of FTA's Master Agreement, typically issued at the beginning of each Federal fiscal year, which includes comprehensive information about Federal laws and regulations that may apply to an FTA assisted project. FTA strongly encourages participants in FTA assisted projects to review the Master Agreement when making its procurement decisions.
- (2) Conflicting Federal Requirements. Requirements of the various Federal agencies that may be involved in the project will sometimes differ, with the result that FTA expects the County to comply with all those differences. If compliance with all applicable Federal requirements is impossible, the County should notify the FTA Chief Counsel for resolution.

2.4 Waivers

Requests for waivers of Federal requirements should be addressed to the Federal Transit Administrator.

2.5 State And Local Laws And Regulations

The Uniform Requirements provide that any subrecipients will use their own procurement procedures that comply with applicable State and local laws and regulations, and also comply with applicable Federal laws and regulations.

- (1) Inadequate State and Local Requirements. If State or local laws or regulations do not address a particular aspect of procurement adequately, Federal direct procurement principles may often (but not always) provide useful guidance.
- (2) Conflicts between Federal Requirements and State or Local Requirements. If Federal requirements conflict with State or local requirements, the County should provide written notification promptly to either the FTA Regional Counsel for the region in which the project takes place or the FTA Assistant Chief Counsel for General Law in the case of projects administered by FTA headquarters staff. FTA will then work with the County to make appropriate arrangements to proceed with the project. If unsuccessful, then FTA reserves the right to amend or terminate Federal assistance for the underlying Project.

SECTION 3: METHODS AND PROCEDURES FOR SOURCE SELECTION

3.1 Micro Purchases-Purchases Under \$5,000

When Appropriate. If permitted by State and local law, the County may acquire property and services valued at \$10,000 or less without obtaining competitive quotations. The County has set its micro purchase limit at \$5,000. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the County uses micro-purchase procurement procedures. FTA does not intend to imply that the County must treat any purchase of \$10,000 or less as a micro-purchase. The County may set lower thresholds for micro-purchases, which it has, in compliance with State and local law, or otherwise as it considers appropriate.

PROCEDURE:

Competition. The County should distribute micro-purchases equitably among qualified suppliers.

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

Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the County made its determination. FTA does not require the County to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

It is a basic responsibility of all County RTPO personnel making purchases in behalf of the County to validate the reasonableness of all prices paid for goods and services. The preferred method is to conduct a limited comparison of prices through a simple computer search, catalog review, etc.

To assure value of the County's requirements at the lowest cost consistent with the quality, service and delivery of the required goods, the following factors should be considered in analyzing cost:

1. Initial purchase price
2. F.O.B. point
3. Cash terms
4. Transportation costs
5. Lead time
6. Packaging and handling cost
7. Warranty
8. Service/Maintenance

3.2 Informal Solicitations for Purchases Not Exceeding \$100,000

When Appropriate. Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, \$5,000) but less than \$100,000.

The County acknowledges that the Federal simplified acquisition threshold at 2 CFR 200.88 is currently \$250,000. The FTA recognizes the small purchase threshold to be the same as the simplified acquisition threshold. Non-Federal entities, however, may set lower thresholds for small purchases in compliance

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with State and local law, or otherwise as it considers appropriate. As such, the County has set its small purchase threshold at \$100,000.

PROCEDURE:

Competition. The County must obtain price or rate quotations from at least three qualified sources.

Prohibited Divisions. The County may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions. However, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase (2 CFR 200.318(d)).

Documentation. The County must document that the price is fair and reasonable and a description of how the County made its determination.

These additional steps are required if a purchase is FTA funded:

- Independent Cost Estimate (ICE) is required (Attachment 2).
- Brand name specifications cannot be used. Specification must describe the pertinent attributes of the product or service sought.
- RTPO Staff completes Small Purchase checklist (Attachment 5).
- Verbal or electronic quotes are solicited from at least three qualified vendors.
- The solicitation does not contain in-State or local geographic preferences except where Federal statutes mandate or encourage them.
- If competition is inadequate, then a Cost analysis must be completed (see Sections 1.22, 5.4).
- Excluded parties search is completed.
- If there is an agreement separate from the purchase order, then proper federal clauses (See Attachments 3 and 3.1) are added.
- If a Purchase order only is used, then the federal terms and conditions will be added to the Purchase order sent to the vendor.

Any purchase of supplies and services less than \$100,000 may be made in accordance with the purchase procedures set forth in this chapter. Purchases shall not be artificially divided to circumvent the solicitation process. If numerous items are being purchased from one vendor on one order, the aggregate price is the determining factor with regard to solicitation procedures.

(1) Purchase Authority and Process.

- a) The Purchasing Department or employees with delegated purchasing authority shall have the authority to purchase without formal competition, for the purchase of any materials, professional services, services or construction amounting to more than \$5,000 and not exceeding a cost of \$100,000. If multiple purchases will be made during one fiscal year with an aggregate amount to warrant annual contracting, the Purchasing Department may require the department/division provide data for a formal competitive solicitation, as is in the best interest of the County.
- b) Such negotiated purchases shall be made in the open market; whenever practical or advantageous, the Purchasing Department or designated representative shall attempt to obtain quotes from a minimum of three qualified vendors. Negotiated purchases of materials, services or construction shall be awarded to the vendor supplying the lowest responsible and responsive quote. The names of the vendors submitting

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quotations, the amount of each quotation and the date, shall be documented and maintained as a public record.

- c) The purchasing procedures adopted pursuant to this chapter shall authorize the purchase of materials, services or professional services in the open market by Department Directors and Division Administrators or their designated representatives of other departments of the County; provided that no such purchase shall exceed the cost of \$5,000 without competition.
- d) No contract shall be artificially divided so as to constitute a small purchase.
- e) The Purchasing Department encourages the solicitation process to increase competition and value for the County. Upon request the Purchasing staff will help facilitate the quote process.

3.3 Solicitations for Purchases of \$100,000 or More

- Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance.
- Proposals will be solicited from an adequate number of qualified sources.
- The County will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.
- Awards will be made to the responsible firm whose proposal is most advantageous to the County's program with price and other factors considered.
- Arbitrary actions are prohibited in the procurement process.

These additional steps are required when a purchase is FTA funded:

- Independent Cost Estimate (ICE) is required (Attachment 2).
- Brand name specifications cannot be used. Specification must describe the pertinent attributes of the product or service sought.
- RTPO Staff completes the appropriate Procurement checklist (Attachments 6-11).
- The solicitation does not contain in-State or local geographic preferences except where Federal statutes mandate or encourage them.
- Price or Cost analysis is completed.
- Excluded parties search is completed (SAM.gov).
- If there is an agreement separate from the purchase order, then proper federal clauses (See Attachment 3) are added.
- If a Purchase order only is used, then the federal terms and conditions will be added to the Purchase order sent to the vendor.

In determining which proposal is most advantageous, the County may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the County based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined in 4220.1F, I, 5. b., Definitions. 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.

- Competitive Sealed Bids/Proposals Required. Expenditures for supplies, materials and equipment or any contract obligating the County of \$100,000 or more and all major capital

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expenditures shall be purchased under formal competitive sealed bid (IFB, Invitation For Bids) or competitive proposal (RFP, Request For Proposals).

- Public Notice Required. Purchases of commodities and/or services estimated to cost \$100,000 or more shall be published in a general circulation newspaper in Mesa County and be published at least five working days preceding the last day set for the receipt of solicitations. Public notice of solicitations shall state the place, date and time of the bid opening.
- Public Records. Purchasing Department and RTPO Staff are responsible for record keeping. All submittals, except confidential or proprietary information as defined by law, are public records and must be retained as such. Documents will be retained electronically through the County's Records Management system. The electronic copy shall be considered the official document.
- Definition – Competitive Sealed Bid (Formal). A competitive sealed bid (IFB) is a method of source selection for a procurement of goods and/or commodities estimated to be \$100,000 or more. This is the method preferred for procuring construction if (1) a complete, adequate, and realistic specifications or purchase description is available, (2) two or more responsible bidders are willing and able to compete effectively for the business, and (3) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price (2 CFR 200.320(c)(1)). Award is generally made to the lowest responsive and responsible bidder whose bid complies with the specifications contained in the contract (bid) documents such as discounts, transportation costs, and life cycle costs. This means that bid price is the decisive criterion for determining the vendor who shall receive the award.
- Definition – Competitive Sealed Proposal (Formal). A competitive proposal (RFP) is a method of source selection for a procurement estimated to cost \$100,000 or more. Award is generally to the respondent whose offer is considered the best when compared and evaluated against all other offers. Cost is not the primary focus of proposal award. Competitive proposal solicitations are used for the procurement of supplies or services that require a high degree of professional skill and expertise, or when looking for the solution to a problem. It's also used when more than one source submitting an offer, and either a firm fixed price or cost-reimbursement type contract is awarded. The qualification based selection process shall be used for the retention of design professionals (architects and engineers) as defined by the Brooks Act.

(1) Competitive Sealed Bid Procedure

- a) Invitation for Bids (IFB). An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement, as well as the bid opening place, time and date. All IFB documents are posted electronically on the County's website via Rocky Mountain E-Purchasing System.
- b) Specifications. Specifications shall be made available to all interested parties as stated in the IFB. If for any reason whatsoever it is necessary to change the specifications or any other of the formal data and there is adequate time as determined by the

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Purchasing Department and RTPO Staff prior to the date of bid opening, an addendum shall be issued setting forth the changes. Specification changes must allow adequate notice and notification time and shall be coordinated between user department and Purchasing. This addendum shall be posted electronically on the County's website via Rocky Mountain E-Purchasing System. In certain cases the bid opening may be postponed to allow adequate time for respondents to prepare their bid based on specification changes. If there is not adequate time, the IFB shall be canceled and a new bid process initiated.

- c) Bonding. Bid bonds (five percent) and 100 percent performance and payment bonds are required on any County construction or facility improvement project of \$100,000 or more or as the Purchasing Department and/or RTPO Director deems advisable to protect the County's interests. Bonding for service contracts or software shall occur at the discretion of the Purchasing Department or the RTPO Director.

For construction or facility improvement projects or subcontracts exceeding the Simplified Acquisition Threshold with FTA funding, payment bond requirements are as follows:

- 50% on contracts under \$1 million
 - 40% on contracts between \$1 million and \$5 million, or
 - \$2.5 million on contracts over \$5 million
- d) Bid Opening. The opening of sealed bids shall be a public formal procedure. Bids shall be opened by the Purchasing Department, at the time and place specified in the Invitation for Bids. The amount of each bid and such relevant information as the Purchasing Department and RTPO Staff deems appropriate, together with the name of each bidder, shall be recorded. Bids must be received prior to the specified time as established in the IFB. Bids received after the specified deadline may be immediately returned to the nonresponsive vendor unopened.
- e) Bid Submission and Bid Evaluation. Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that shall affect the price and be considered in evaluation for award shall be objectively measurable, such as discounts, allowances, transportation costs and total or life cycle costs. The IFB shall set forth the evaluation criteria to be used and the relative importance of each evaluation criteria shall be clearly stated.
- f) Correction or Withdrawal of Bids. Correction or withdrawal of inadvertently erroneous bids before and after a bid opening may be permitted in accordance with this subsection. Mistakes discovered before the bid opening may be modified or withdrawn in writing, by email, or fax notice received in the office designated in the IFB prior to the time set for the bid opening. After the bid opening, corrections in bids shall be permitted only to the extent allowable in the bid documents and that the bidder can show by clear and convincing evidence that the mistake of a nonjudgmental character was made, the nature of the mistake and the bid price actually intended. Except for the foregoing, after the bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the County or fair

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competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if: (i) the mistake is clearly evident on the face of the bid document, but intended correct bid is not similarly evident; or (ii) the bidder submits evidence which clearly and convincingly demonstrates a mistake was made. All decisions to permit the correction or withdrawal of bids shall be supported by a written determination made by the Purchasing Department.

- g) Award. Generally, an award shall be made by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. In the event the low responsive and responsible bid for a construction project exceeds available funds or the engineer's estimate, the Purchasing Department and RTPO Staff, when time and economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsible and responsive bidder in order to bring the bid within the amount of available funds. In the purchase of supplies or services pursuant to this section of whatsoever nature or character, amounting in value to \$50,000 or more, the Purchasing Department and RTPO Staff shall make a report and transmit the bids to the next regular session of Board of County Commissioners with recommendation concerning acceptance or Solicitation analysis. The Board of County Commissioners shall thereupon approve or disapprove the recommendation of the Purchasing Department.
- (2) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, a Request for Information, RFI, may be issued. An RFI can request submission of prices as part of the RFI process; or request the submission of un-priced offers to be followed by an IFB limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (3) Competitive Sealed Proposal/Competitive Negotiation Process. A contract for supplies or services for \$100,000 or more may be entered into by use of the competitive sealed proposal/competitive negotiations method when: (1) the Purchasing Department along with RTPO Staff determines that the complex nature or technical details of a particular procurement make the use of competitive sealed bidding either not practical or not advantageous to the County; (2) specifications cannot fairly or objectively be prepared as to permit competition in the invitation for bids; (3) high technology and electronic equipment is available from a limited number of sources; or (4) specifications cannot practically be prepared except by reference to specifications of the equipment of a single source of supply.
 - a) Requests for Proposals (RFP). Proposals shall be solicited through a request for proposals process.
 - b) Receipt of Solicitations. No proposals shall be opened until the time designated in the proposal document or addenda. A tabulation/abstract of solicitations shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered.

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- c) Evaluation Factors. Proposal evaluation criteria should measure how well each offeror meets the desired performance requirements established in the RFP before proposals are received. Final consideration for awarding of contract may not be based solely on price. A combination of qualifications, past experience, demonstrated successes, references, fees and costs, and capacity to fulfill all requirements of the contract and other qualifying considerations shall be considered for evaluation purposes. The relative importance of the evaluation factors shall be clearly stated in the RFP, however the weighting factors are not required to be included.

When utilizing FTA funds the evaluation criteria for Architects and Engineers shall not include a rating of cost as defined by the Brooks Act. Cost can only be considered when negotiating with the top ranked firm. If negotiations fail, negotiations will take place with the next most qualified offeror until agreement is reached on a price that is determined to be fair and reasonable. At no point will the County return to a previous offeror where negotiations have failed.

- d) Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of classification to assure full understanding of, and conformance to, the solicitation requirement. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. Note whether presentation will be required and if proposals will be rescored; include the option for negotiations. Discuss whether "Best and Final" offers may be requested, and if proposals will be rescored. Rescoring will use only the original evaluation factors.
- e) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and evaluation factors set forth in the request for proposals. No other factors or criteria shall be used for this evaluation. The contract file shall contain the basis on which the award was made. In the purchase of supplies or services amounting in value to \$50,000 or more, the Purchasing Department and RTPO Staff shall make a report and transmit the offers to the next regular session of Board of County Commissioners with recommendation concerning acceptance or rejection thereof. Board of County Commissioners shall thereupon approve or disapprove the recommendation of the Purchasing Department. If the value of the award is between \$5,000 and \$100,000, the RTPO Staff shall make report and recommendation and transmit same to the authorized staff, as reflected in Section 6.3 of this document, to approve or disapprove the award. If the value of the award is \$5,000 or less, the RTPO staff shall make a report and recommendation and transmit same to the RTPO Director, or designee to approve or disapprove the award.

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When using FTA funds, the award cannot go to anyone listed on the Excluded Parties List System (EPLS), which is part of the System for Awards Management (SAM) at www.sam.gov (a print out of the search must be included in the procurement file). Also the evaluation criteria for Architects and Engineers shall not include a rating of cost. Cost can only be considered when negotiating with the top ranked firm, on federally funded projects. No other factors or criteria shall be used for this evaluation.

3.4 Nonresponsive Bid Definition

A responsive bid is one that is in substantial conformance with the requirements of the IFB. Bidders who substitute their standard terms and conditions for that of the County's bid documents or who qualify their bids in such a manner as to nullify or limit their liability to the County may be nonresponsive bidders. A Responsiveness Determination Form is included as Attachment 13.

- (1) Determination of Nonresponsive. The following are examples of nonresponsive bidders:
 - a) A bidder who fails to deliver a bid prior to the specified place, time and date as shown on the IFB such is considered late and the bid shall not be opened.
 - b) A bidder who fails to conform to required delivery schedules as set forth in the bid documents or in the permissible alternatives.
 - c) A bidder who qualifies prices in such a manner that the firm's bid price cannot be determined ("price in effect at time of delivery").
 - d) A bidder who fails to offer goods or services that comply with the specifications of the bid.
 - e) A bidder who makes the purchasing authority the responsible party for determining that the bidder's products conform to the specifications.
 - f) A bidder who fails to furnish bid surety, when required.
 - g) A bidder who limits the rights of the County under any contract clause.
 - h) A bidder who fails to return or comply with the Response requirements.
- (2) Appeal. When a bid is declared nonresponsive, the County's FTA Procurement Policies and Procedures require that the bidder be notified and given an opportunity to appeal that determination. If the bidder believes that the nonresponsive determination was erroneous, arbitrary or capricious, the bidder has the right to protest according to the rules and regulations for protested solicitations or awards contained herein (See also Section 3.10 Bid and Award Protests).
- (3) The County at its sole discretion may make a determination of nonresponsive, or waive any requirement when deemed in the County's best interest. The sound business reason(s) for any or all bids being rejected must be documented.

3.5 Responsible Vendor Definition

A "responsible vendor" is a person who has the capability in all respects to perform fully the contract requirements and the perseverance, experience, integrity, reliability, capacity, facilities, equipment and credit which shall assure good, full and faithful performance. A Responsibility Determination Form is included as Attachment 12.

- (1) Determination of Non-responsibility. The following are reasons a bidder may be declared non-responsible:

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- a) The bidder is not a regular dealer or supplier of the goods or services offered;
 - b) The bidder does not have the ability to comply with the required delivery or performance schedule;
 - c) The bidder does not have a satisfactory record of performance as documented by the County or as referenced by other jurisdictions or customers;
 - d) The bidder does not have a satisfactory record of integrity or the bidder is currently disbarred or suspended by the State of Colorado or other Colorado jurisdiction or political subdivision;
 - e) The bidder does not have the necessary facilities, organization, experience, technical skills or financial resources to fulfill the terms of the contract/purchase order;
 - f) The bidder of construction and/or maintenance services has a demonstrated record of safety violations;
 - g) Inability to meet the required contract performance schedule.
- (2) Appeal. When a bid is declared “non-responsible,” the the bidder shall be notified and given an opportunity to appeal that determination. If the bidder believes that the non-responsible determination was erroneous, arbitrary or capricious, the bidder has the right to protest according to the rules and regulations for protested solicitations or awards contained herein (See also Section 3.10 Bid and Award Protests).
- (3) The County at its sole discretion may make a determination of non-responsibility, or waive any requirement when deemed in the County's best interest.

3.6 Solicitation Irregularities.

The Purchasing Department along with RTPO Director has authority to waive irregularities if: (a) the item being waived is only a matter of form or is an immaterial variation from the exact requirements of the Solicitation; (b) the item being waived has trivial or no effect on price, quality, quantity, delivery or performance; (c) such a waiver would not affect the relative standing of bidders or be otherwise prejudicial to them; and (d) the waived irregularity is in the County's best interest. Examples of minor irregularities that may be waived are:

- (1) Failure to furnish with the bid certain required information regarding the vendor's qualifications to perform the contract.
- (2) Failure to submit required descriptive information on the products offered.
- (3) Failure to return the proper number of executed bids or attachments, including certifications and affidavits except for FTA required certifications.
- (4) Failure to return a bid addendum or amendment if on the face of such bid the bidder acknowledges receipt of addendum or amendment or if the addendum or amendment does not have material effect on the bidder's liability under the terms of the contract.
- (5) Failure to sign a bid, when evidence is submitted with the bid that clearly shows that the bid was the one intended by the bidder and that failure to sign was strictly an oversight.

When such minor irregularities are discovered by the County, the offeror is requested to remedy the problem within a reasonable timeframe by later submitting omitted data or by providing a written statement of intent.

3.7 Exemptions to Competitive Solicitation. (See also Section 5: Non-competitive Procurement)

- (1) The following items are exempted from competitive bidding:

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- a) Supplies, materials, services costing less than \$5,000, purchased with FTA funds;
 - b) Purchases made cooperatively with other units of government such as the State of Colorado and government cooperative groups utilizing extended awards from other governmental agencies. The County may, when deemed appropriate, extend its award to other governmental agencies;
 - c) Purchases/Contracts with utility providers, federal, local government and not-for-profit units;
 - d) Magazines, books and periodicals;
 - e) Supplies, products or services indispensable to the County which are obtainable, for practical purposes, only from a single source, as identified by the Purchasing Department using the procedure herein set forth;
 - f) The material qualifies as an object of fine art;
 - g) A particular material is required to match materials currently in use by the County;
 - h) Original Equipment Manufacturer (OEM) repair parts purchased from the source vendor.
 - i) Annual maintenance and service agreements on purchases originally obtained by competitive solicitation or Sole Source when the terms of the agreement specify the original provider performs ongoing maintenance.
- (2) Miscellaneous Exemptions. Any procurement resulting from a formal competitive bid or proposal may be used as the basis for the negotiated purchase of additional quantities of the same materials or services at any time within a period of three years from the date of approval; provided, however, that subsequent procurements are expressly limited to the specific terms, conditions and pricing established by the original solicitation. Additional quantity negotiations must be accomplished by the Purchasing designee.
- (3) Construction change orders may be permitted without competition as described in Section 7: Change Orders.

3.8 Waiver Process to Formal Competitive Bids.

The formal bid process may not be waived when FTA funds are being used.

3.9 Rejection of Bids.

All bids may be rejected when one or more of the following occur:

- (1) All bids exceed the budgeted amount;
- (2) There are no responsible bidders;
- (3) There are no responsive bidders;
- (4) The project is abandoned;
- (5) The specifications, scope and/or terms and conditions are revised;
- (6) Irregularities in the procurement process as determined by the Purchasing Department, RTPO Director and/or the County Administrator.

3.10 Bid and Award Protests.

- (1) Any bidder, submitter of a proposal, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest. Protestors shall initially seek resolution of their complaints with the Purchasing Department. A protest with respect to an IFB, RFP or RFQ shall be submitted in writing prior to the opening of solicitations or the closing date of solicitations, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date of proposals.

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- (2) The protest shall be submitted in writing to the Purchasing Department within seven (7) business days after such aggrieved person knows or should have known of the facts giving rise thereto. In the event of a timely protest, the Purchasing Department shall call the matter to the County Administrator's and the BOCC's attention immediately and ask for a determination in writing of whether it is necessary to delay or to go forward on the project despite the objection. The decision of the BOCC is final.
- (3) If prior to or after the bid opening or the closing date for receipt of proposals, the Purchasing Department and/or RTP Director determines that a solicitation is in violation of state or federal law, the solicitation or proposed award shall be canceled or revised to comply with applicable law.
- (4) If after an award the Purchasing Department and/or RTP Director determines that a solicitation or award of a contract was in violation of applicable law, the contract is void.
- (5) If for any reason collusion or other anticompetitive practices are suspected among bidders or submitters of proposals, a notice of the relevant facts shall be transmitted to the Mesa County Attorney's Office, which then may be transmitted to the Colorado Attorney General and/or the Mesa County District Attorney.
- (6) Protests involving Federal Transit Administration (FTA) Funded Projects
 - a) Vendors who protest an FTA funded purchase have an additional remedy if their protest is denied by the County. They may also protest the award, (after these administrative processes have been exhausted) directly to the Federal Transit Administration.
 - b) FTA will only entertain a protest that alleges the County failed to follow their protest procedures and that such a protest must be filed in accordance with the Circular; and
 - c) Allowance for request for reconsideration (if data becomes available that was not previously known, or there has been an error of law or regulation).
 - d) The County will notify FTA of any protests received relating to FTA funded projects for procurements over \$100,000.
 - e) The County will notify FTA of any protests that are denied regardless of the procurement amount.

3.11 Confidentiality

After solicitations are opened and reviewed at the solicitation opening, they become confidential documents until the Board of County Commissioners awards the contract or the solicitation project is cancelled. Staff shall not discuss solicitations with competing vendors. Vendor questions must be referred to the Purchasing Department. Staff shall not discuss with any vendor the recommended award or the reasons for awarding or not awarding.

3.12 Disagreements about Recommendations

If the RTPO and Purchasing Department disagree about the award recommendation, the RTP Director or designee and the Purchasing Department or designee shall meet personally to review the reasons for the disagreement. The mutual goal of the RTPO and the Purchasing Department is to award to the lowest responsive and responsible bidder for goods or services that meet the RTPO's requirements contained in the specifications. Disagreements that cannot be resolved shall be forwarded to the County Administrator's office for final determination.

SECTION 4: SPECIFICATIONS

The term "specification" or "specifications" refers to that portion of a solicitation that describes the

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required characteristics of a commodity or service. It is used interchangeably with the terms “purchase description,” “purchase specification,” “purchase requirement,” “commercial item description,” “scope of work,” and “statement of work.” A specification may include requirements for samples, prototypes, inspection, testing, warranty and packaging. The specifications are the communication medium between the purchaser and the seller and the basis on which the bids are prepared. Specifications for each item should be definite and precise to eliminate the possibility of misunderstanding on the part of the vendor or the purchaser.

The fundamental premise of public procurement is that maximum price competition minimizes government costs. Specifications shall be prepared accordingly.

Specifications which call for only one “brand or trade name” item to be furnished shall not be issued unless prior approval is granted by the RTP Director and/or Purchasing Department. “Brand names” may be used to establish acceptable or minimum standards that all vendors must meet or exceed. In considering and developing specifications, it may be determined that expenditures cannot be expected to provide for excessive levels of quality.

4.1 Authority for Specifications

The RTPO is responsible for and has the authority to accept or reject any specification. Since the purpose of a specification is to translate a user’s need into the delivery of a good or service, the development of specifications must be a cooperative effort between the RTPO and Purchasing. However, prior to release of a specification as part of a solicitation, the Purchasing Department and RTPO must be satisfied that it shall result in a fair and equitable competitive procurement.

4.2 Types of Specifications

There are several types of specifications. The development, selection and use of a particular type are dependent on the situation, time, information available and needs of the user.

- (1) Performance Specifications. Performance specifications (also known as functional specifications) are preferred since they communicate what a product is to do, rather than how it is to be built. Among the ingredients of a performance specification would be the following:
 - a) A general nomenclature or description;
 - b) Required performance characteristics (minimum/maximum) to include speed, storage, production capacity, usage, ability to perform a specific function;
 - c) Operational requirements, such as limitations on environment, water or air cooling, electrical requirements;
 - d) Site preparation requirements for which the contractor shall be responsible, such as electrical, plumbing for which the County shall be responsible;
 - e) Compatibility requirements with existing equipment or programs;
 - f) Conversion requirements for maintaining a current equipment or system until switching to the new equipment or system;
 - g) Installation requirements;
 - h) Delivery date;
 - i) Maintenance requirements;
 - j) Supplies and parts requirements;
 - k) Quantity and method of pricing;
 - l) Warranty; and

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m) Service location and response time.

Note: Performance specifications shall be developed by County agencies unless impractical or unnecessary to fully and accurately describe agency requirements.

- (2) Design Specifications. Design specifications employ dimensional and other physical requirements and concentrate on how a product is fabricated, rather than on what it should do. Design specifications are normally prepared by architects and engineers for construction or custom manufactured products. Among the ingredients of a design specification would be the following:
 - a) Dimensions, tolerances and specific manufacturing or construction processes;
 - b) References to a manufacturer's brand name or model number (see section below on brand name specifications); and
 - c) Use of drawings and other detailed instructions to describe the product.

- (3) Brand Name Specifications
 - a) A brand name specification may be used only when the Purchasing Department and RTPD has determined that sufficient sources of competition exist for the procurement of the material and that the use of the brand name specification is not intended to limit or restrict competition.
 - b) A brand name specification may also be used to describe the standard of quality, performance and other salient characteristics of a material in lieu of a description of its physical or functional characteristics. In such cases, the solicitation shall contain explanatory language that the use of the brand name is for the purpose of describing the standard desired and that the substitution of equivalent materials is permitted.
 - c) When a specification mentions a manufacturer's brand name or model number, it shall also include the words, "or equal." In this regard, "or equal" is interpreted to mean, "substantially (real, actual and/or true, not imaginary) equal and capable of performing the essential functions of the referenced brand name or model." Identify in the requisition any specific features of the referenced brand that must be met.

- (4) Service Delivery Specifications (aka – Scope of Work/Services). The following is an outline of the types of information that should be included in a scope of work or scope of services developed for procurement of independent contractors providing services other than construction (e.g., HVAC maintenance, window washing, demolition, etc.).
 - a) General Requirements. Describe, in general terms, the contractor's responsibility to provide a service or produce a final product.
 - b) Specific Requirements. Next, address the specific tasks, sub-tasks, parameters and limitations which must be considered in producing the service or final project. Such factors as the following should be included:
 - (i) Details of work environment;
 - (ii) Minimum or desired qualifications;
 - (iii) Amount of service needed;
 - (iv) Expected results;
 - (v) Location of service;
 - (vi) Definition of service unit;
 - (vii) Time limitations;
 - (viii) Travel regulations or restrictions;

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- (ix) Special equipment required; and
 - (x) Other factors affecting working environment.
- c) County-Provided Materials or Services. List any plans, reports, statistics, space, personnel or other County-provided items that must be used, or are available for use, by the contractor.
- d) Deliverables, Reports and Delivery Dates. Identify the specific delivery dates for all services and products the contractor must furnish. Be clear about the expectations of the County for the contractor's performance.

4.3 Specification "Dos and Don'ts"

- (1) Do:
- a) Use the word "must" or "shall" to describe a command or mandatory requirement;
 - b) Use the words "should" or "may" to describe an advisory or optional requirement;
 - c) Be specific and detailed in presenting mandatory requirements; and
 - d) State a requirement of fact once and avoid duplication.
- (2) Don't:
- a) Present something as mandatory if it is really only optional;
 - b) Write specifications or scope of work that restrict response to a single bidder/offeror; and
 - c) Place bid/proposal administrative or contractual terms in the specification portion of the document.

4.4 Preparation of Specifications

All specifications shall be drafted so as to promote overall economy for the purpose intended to encourage competition in satisfying the County's needs and shall not be unduly restrictive. The policy enunciated in this chapter applies to all specifications including, but not limited to, those prepared for the County by independent architects, engineers, designers and draftsmen.

RTPO Staff are responsible for the first draft of specifications to be submitted to Purchasing. Lengthy and complex specifications should be submitted to Purchasing via e-mail attachment. After Purchasing has reviewed the specifications and attached its standard terms and conditions, the RTPO shall be forwarded a redline draft for final review and approval.

Bids and quotations should be based on concise but adequate specifications. A lengthy specification composed or designed solely for the purpose of eliminating competition, other than those able to supply a particular brand name commodity, should be avoided and the actual brand name or common description should be used when no other of its kind would be equally satisfactory. Specifications should be detailed to provide a basis for full and fair competitive bidding upon a common standard and should be free from any restrictions that would have the effect of stifling competition.

The Purchasing Department and RTPO have authority to require modifications or alterations to a specification to permit competitive bidding. The RTPO and/or Purchasing shall develop a written report of any change(s) and why change(s) is desired and/or necessary. Disagreements between Purchasing Staff and RTPO regarding final bid or proposal specifications shall be resolved by the County Administrator.

4.5 Changing Specifications

Once a solicitation has been posted, no changes in the specifications may be made unless an addendum is issued, clearly pointing out such changes. Vendors must acknowledge receipt of all addenda. Once a decision has been reached on the specification(s), all responses must be based upon the same specifications and no vendor has a right to substitute other specifications for those contained in the solicitation.

SECTION 5: EXCEPTION TO COMPETITIVE PROCESS, SOLE SOURCE EQUIPMENT, SUPPLIES OR SERVICES (NON-COMPETITIVE PROCUREMENT)

5.1 Other Than Full and Open Competition

Normally, the County must provide for full and open competition when soliciting bids or proposals. The Uniform Requirements, however, acknowledge that under certain circumstances, the County may conduct procurements without providing for full and open competition.

5.2 When Appropriate

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

- (1) Adequate Competition. After soliciting several sources, FTA expects the County to review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After the County determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the County may determine the competition adequate. A cost analysis must be performed in lieu of a price analysis when this situation occurs.
[FTA C 4220.1F Page VI-17](#)
- (2) Sole Source. When the County requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the County may make a sole source award. When the County requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the County has made a sole source award that must be justified.
 - a) Unique Capability or Availability. The property or services are available from one source if one of the conditions described below is present:
 - i) Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the County only from one source and has not in the past been available to the County from another source.
 - ii) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

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- iii) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - iv) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the County's needs.
- b) Single Bid or Proposal. Upon receiving a single bid or proposal in response to a solicitation, the County shall determine if competition was adequate. This shall include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- i) Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the County's control. Many unrelated factors beyond the County's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid sole source.
 - ii) Inadequate Competition. FTA acknowledges competition to be inadequate when caused by conditions within the County's control. For example, if the specifications used were within the County's control and those specifications were unduly restrictive, competition will be inadequate.
 - iii) Unusual and Compelling Urgency. The Uniform Requirements permit the County to limit the number of sources from which it solicits bids or proposals when the County has such an unusual and urgent need for the property or services that the County would be seriously injured unless it were permitted to limit the solicitation. The County may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.
 - iv) The item is an associated capital maintenance item as defined by 49 USC 5307(a)(1) that is procured directly from the OEM. The County must certify to FTA that this is the only source and the price is no higher than for like customers.
 - v) Authorized by FTA. The Uniform Requirements provide Federal agencies authority to permit the County the use of noncompetitive proposals. Under this authority, FTA has made the following determinations:
 - 1. Consortium, Joint Venture, Team, Partnership. With some exceptions, when FTA awards a grant agreement or enters into a cooperative

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agreement with a consortium, joint venture, team, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects the County to use competition, as feasible, to select other participants in the project.

2. FAR Standards. To ensure that the County has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in the Uniform Requirements, the FAR authorizes less than full and open competitive procurements in one or more of the following circumstances:
 - a. Statutory Authorization or Requirement. To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.
 - b. National Emergency. To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.
 - c. Research. To establish or maintain an educational or other non-profit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.
 - d. Protests, Disputes, Claims, Litigation. To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
 - e. International Arrangements. When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing the recipient for the cost of the acquisition of the supplies or services for that government.
 - f. National Security. When the disclosure of the recipient's needs would compromise the national security.
 - g. Public Interest. When the County determines that full and open competition in connection with a particular acquisition is not in the public interest.

5.3 When Prohibited

Less than full and open competition is not justified based on:

- (1) Failure to Plan. The County's lack of advance planning, or
- (2) Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (for example, expiration of Federal assistance previously available for award).

5.4 Procurement Procedures

When less than full and open competition is available to the County, the Uniform Requirements direct the County to:

- (1) Potential Sources. Solicit offers from as many potential sources as is practicable under the circumstances.
- (2) Sole Source Justification. If the County decides to solicit an offer from only one source, the County must justify its decision adequately. FTA requires this sole source justification to be in writing.
- (3) Cost Analysis. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits (see Section 1.22).
- (4) Preaward Review. Submit the proposed procurement to FTA for preaward review if FTA so requests:
 - a) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - b) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - c) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurements; or
 - d) The proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

SECTION 6: CONTRACTS

6.1 General

"Contract" shall mean any agreement enforceable by law between the County and one or more outside parties, regardless of form or title, for the procurement of materials, services or construction. To be effective, a contract must include offer and acceptance by competent parties and the furnishing of some good or service for an agreed monetary consideration.

6.2 Origin of Contracts

Contracts may be originated in several ways before they are used by the County.

- (1) State Cooperative Purchasing Contracts. Under Section 3019 of the FAST Act, the County may purchase rolling stock and related equipment from a State cooperative procurement contract. A "cooperative procurement contract" means a contract entered into between a State government or eligible nonprofit entities and one or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants. The contract term for a cooperative procurement contract may be for an initial term of not more than two years and may include three optional extensions of one year each. A lead procurement agency or lead nonprofit entity in such a

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procurement may charge participants in the contract no more than one percent of the total value of the contract.

Under prior law, FTA referred to these types of State contracts as “State purchasing schedules” and, as such, were only available to recipients within that State. Under Section 3019 of the FAST Act, the County may purchase rolling stock and related equipment from any State’s cooperative procurement contract or schedule.

State cooperative purchasing contracts or state schedules are subject to federal requirements, including, but not limited to, full and open competition, no geographic preferences, Buy America, and bus testing, and must include all FTA required clauses and certifications with its purchase orders issued under the State contract.

- (2) **Joint Procurements.** These contracts are created by a voluntary pooling of interests by governmental units. If required by the bid documents or if the contractors agree, they may be used by other political jurisdictions, such as the County. When in the best interest of the County, the RTPO has authority to “piggyback” such agreements for the acquisition of supplies and services without going through the formal bid/proposal process.

FTA requires additional information prior to using joint procurements. Please see Piggybacking Worksheet (Attachment 1) for specific information to be considered.

6.3 Contract Approval

Only the Board of County Commissioners, County Administrator, RTP Director and their designated representatives, and the Purchasing Department are authorized to sign contracts which bind the County for the procurement of goods, services, insurance or construction, unless a specific delegation or exemption is made by Board of County Commissioners by resolution, code, regulation or letter of authority to another official or employee. Approval thresholds are as follows with FTA funds:

Expenditure Amount	Expenditure Approval Level	Source Selection
Less than \$5,000	RTPO Staff	No competitive bid required
\$5,000 - \$100,000	\$5,000-\$24,999: RTP Director	Documented, competitive bid from at least three (3) sources
	\$25,000-\$49,999: Chief Financial Officer or County Administrator	
	\$50,000 or more: BOCC	
Greater than \$100,000	BOCC	Formal, advertised bid (IFB or RFP)

Table Notes:

- All thresholds above are per transaction not per item.
- Table applies to material and/or service acquisitions with adequate current year budget appropriations.

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- Unbudgeted expenditures are prohibited except in case of actual emergency or County Administrator directive.

6.4 Contracts for Personal Services

- (1) Before requisitioning approval of an individual to provide personal services to the County, the RTPO should be certain that no violation of law, including but not limited to Internal Revenue Service (IRS) regulations, will occur. Care must be taken to make sure the personal services contract does not establish an employer-employee relationship with the County.
- (2) Generally, the following tests support a personal services contract with an individual:
 - (a) The individual has performed similar services on a contractual basis with other clients;
 - (b) The individual has paid tax withholding and social security withholding as a self-employed person and agrees to do so during its contract with the County; and
 - (c) The individual shall perform the duties independently without direct detailed supervision by the County to include independence in establishing work hours and location of performance of duties.

6.5 Contract Administration

- (1) Departmental contracts shall be administered by the using agency. The RTP Director is responsible for designating the contract administrator (a.k.a. project administrator or project coordinator) prior to the solicitation of any contracts.
- (2) The RTPO contract administrator shall be responsible for assuring that the contractual relationship is completed successfully and in accordance with contract terms, conditions and specifications as well as Federal, State and local requirements. The contract administrator may or may not be a County employee.
- (3) Among the activities of a contract administrator is the following:
 - (a) Inspecting, accepting and recording contractor performance;
 - (b) Communicating the County's requirements to and with contractors;
 - (c) Evaluating contractor performance in accordance with the terms, conditions, and specifications of the contract or purchase order;
 - (d) Notifying Purchasing Department and RTP Director promptly of any disputes, failures to perform or other problems with contractors;
 - (e) Documenting all activities of the contract and assuring copies of important documents are retained and/or forwarded to purchasing; and
 - (f) Process contract amendments and change orders, ensuring they are approved by authorized official; determine if they are fair and reasonable by use of independent cost estimates and cost or price analyses; consistent with contracts base scope.
 - (g) Processing payments and contract close-out documents.
- (4) It shall be the Purchasing Department and RTPO's responsibility to:
 - (a) Maintain the County's record file of the contract;
 - (b) Review and approve all requests for changes in delivery, price or specification before any action is taken by the Department or contractor;
 - (c) Create purchase order(s);
 - (d) Resolve disputes with contractors; and
 - (e) Issue cure notices, demand letters and contract default/termination notices to contractors.

6.6 Contracts for Public Improvements/Construction

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- (1) Contracts for public improvements/construction shall be initiated by the Purchasing Department in coordination with RTPPO in accordance with County bidding procedures. These contracts are subject to approval in accordance with the authorization limits stated herein.
- (2) When a contract for public improvements/construction is awarded above \$100,000, the following bonds or security shall be delivered to the County and shall become binding on the parties upon execution of the contract:
 - a) A performance bond satisfactory to the County, executed by a surety company authorized to do business in the State of Colorado or otherwise secured in a manner satisfactory to the County, in an amount equal to 100 percent of the price and/or compensation specified in the contract; and
 - b) A payment bond satisfactory to the County, executed by a surety company authorized to do business in the State of Colorado or otherwise secured in a manner satisfactory to the County, for the protection of all persons supplying labor and material to the contractor or its subcontractor for the performance of the work provided for in the contract. The bond shall be, when using FTA funds:
 - 50% on contracts under \$1 million
 - 40% on contracts between \$1 million and \$5 million, or
 - \$2.5 million on contracts over \$5 million
- (3) Nothing in this chapter shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds or in circumstances other than those specified.
- (4) Project Management of Federal Transit Administration (FTA) funded contracts. Project Managers are required as part of their contract oversight to become familiar with the applicable Disadvantage Business Enterprise (DBE) activities in conjunction with the capital project. This includes:
 - a) Insuring that DBE subcontractors listed by the general contractor are actually performing the work.
 - b) Requiring that any DBE subcontractor who is going to be replaced by the general contractor, be replaced by a DBE subcontractor.
 - c) Other monitoring activities as required by the FTA must be adhered to, including prompt payment and retainage payments to each subcontractor.
 - d) Davis-Bacon wages must be included in the solicitation and contract documents for any construction, repair or maintenance project over \$2,000.

6.7 Multiyear Contracts

Unless otherwise provided by law, a contract for supplies or services may be entered into for a period of time deemed to be in the best interest of the County, if conditions of renewal or extension are included in the solicitation. Payment and performance obligations for succeeding fiscal years shall be subject to availability and appropriation of funds thereof.

With FTA funds, contract term for rolling stock and replacement parts shall not exceed the County's needs for rolling stock and replacement parts within five (5) years for buses inclusive of options without prior written FTA approval with FTA funds are involved. For all other types of contracts, the contract file must contain evidence that the contract term is based upon sound business judgment.

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When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

Multi-year contracts must be approved by the BOCC and are subject to annual appropriation.

SECTION 7: CHANGE ORDERS

7.1 CHANGE ORDER POLICY FOR PROFESSIONAL SERVICES AND CAPITAL CONSTRUCTION CONTRACTS:

Professional Services and Construction contracts shall contain a defined procedure to document any change to the scope of work. The County Contract Administrator identified in the contract shall be responsible for documenting the change and any resulting changes in the contract value. Contracts shall contain instructions which define the manner in which changes are documented. This documentation shall include at a minimum:

- (1) Approval Requirements. The Contract Administrator will have cost justifications supporting each change order it may issue and have the appropriate authorized official to approve any proposed change order before it is issued.
- (2) Cost Restrictions. To be eligible for FTA assistance under the County's FTA Procurement Policy and Procedures, 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.

7.2 The contract's identified Contract Administrator shall have full authority to initiate and approve changes that decrease the scope of work and/or contract price.

7.3 The contract's identified Contract Administrator may incorporate changes that increase the scope of work and/or the contract price with the following exceptions:

- A. For non-capital construction contracts:
 - i. Proposed net change exceeds 10% or \$50,000 (whichever is the lesser amount) of the initial contract value originally approved by the BOCC; or
- B. For capital construction contracts:
 - i. Proposed change exceeds an increase of twenty-five (25%) for contracts with an original value from \$50,000 to \$400,000, or exceeds an increase of ten percent (10%) or \$250,000 (whichever is the lesser amount) for contracts with an original value that exceeds \$400,000.

Exceptions identified in 7.3.A and 7.3.B require that the BOCC be briefed at Public Hearing by the Contract Administrator and that the BOCC must provide approval prior to any work beginning on any tasks associated with the Change Order under consideration. In the event the BOCC does not approve the proposed Change Order(s) the additional work will either not be authorized by Mesa County or the additional scope of work may be subjected to a competitive source selection process on a stand-alone basis.

The change order percentages and amounts identified in Section 7.3 are cumulative per each contract.

SECTION 8: INDEPENDENT COST ESTIMATES (ICE)

GENERAL

Independent Cost Estimates (ICE) are used to provide costing estimates for projects and purchases. They must be completed for any and all projects or purchases that are federally funded prior to receiving quotes, bids or proposals and must show the date the ICE was prepared. The ICE:

- Can be a simple or a complex budgetary estimate based upon and inspection of the product and a review of items such as drawings, specifications and prior data.
- Is critical when there is no price competition (e.g., for architect-engineer procurements where only one price proposal is received), or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high technology items or professional services).
- Is also useful in competitive procurements to alert the agency when all competitors are submitting unreasonable or low cost proposals.
- Is also used prior to negotiating change orders

PROCEDURE

It is a basic responsibility of all County personnel making purchases, which are federally funded, on behalf of the County to validate the **reasonableness** of all prices paid for goods and services. The preferred method is to conduct an ICE review and complete the ICE form. Prices can be obtained from various sources. Possible sources used may include:

- Published price list
- Previous price paid for like item(s) or service (The applicable date of the pricing used should be noted).
- Engineering or technical estimate (The professional performing the estimate must be included).
- Independent third party estimate (The third party firm or company, plus the individual preparing the estimate must be included).
- Manufacturer, distributor or dealer web site pricing.
- Manufacturer, distributor or dealer catalog pricing.
- Other Grantees

Additional costs that should be included for non-standard items or services, if applicable are:

- Cost of shipping and handling
- Materials used
- Work description of labor process
- Other miscellaneous direct costs
- Labor rate
- Number of hours to perform the process
- Labor class
- Overhead and profit

Addendum 1

The ICE form must be dated and signed by the individual with authority and retained in the contract file (Attachment 2).

SECTION 9: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

The County encourages all disadvantaged business enterprises to submit bids in response to all invitations and will not be discriminated against on the grounds of race, color, national origin. The County is part of the Unified Certification Program (UCP) for the State of Colorado. The UCP maintains a current list of active disadvantaged business enterprises.

(<http://www.dot.state.co.us/Bidding/listings.html>)

The County will take all necessary affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- (4) Establishing delivery schedules, when the requirement permits, which encourage participation by small and minority business and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section. (2 CFR 200.321)

All vehicle purchases funded by the Federal Transit Administration will require the vehicle manufacturer to submit a current transit vehicle manufacturer (TVM) certification.

The County will ensure that all TVMs have approved FTA DBE programs and current DBE goals prior to bidding on a contract. The listing of approved TVMs can be accessed on FTA's website (<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>) or by contacting the FTA Office of Civil Rights at 202-336-4018 for more information.

This TVM requirement also applies to piggy-back contracts. A print of the TVM list from FTA's website shall be placed in the procurement file.

SECTION 10: DISPOSAL OF SURPLUS PROPERTY

Any item of property purchased with FTA funds over \$5,000 in cost requires permission from the FTA prior to disposal. These FTA funded items must be at the end of their useful life or the County must repay the Federal Government based on the remaining value using straight line depreciation. The County is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs (2 CFR 200.318(f)).

Addendum 1

**Attachment 1
PIGGYBACKING WORKSHEET**

Definition: Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. ("FTA Dear Colleague" letter, October 1, 1998).

To determine if a situation exists where the County may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that the procurement file includes documentation substantiating the determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Appendix A.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. Does the contract term comply with the five-year term limit established by FTA?		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See BPPM Section 5.1.		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the Best Practices Procurement and Lessons Learned Manual October 2016, Section 3.3.2-Joint Procurements of Rolling Stock and Section 3.3.4Piggybacking, and (c) FTA Circular 4220.1F.

ATTACHMENT 3
REQUIRED CONTRACT FEDERAL CLAUSES
FEDERALLY REQUIRED AND OTHER MODEL CLAUSES APPLICABILITY OF THIRD PARTY CONTRACT
CLAUSES (excluding micro-purchases, except for construction contracts over \$2,000)

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal government obligations to third-parties (by use of a disclaimer)	All	All	All	All	All
Program fraud and false or fraudulent statements and related acts	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA, except Special DOL EEO clause for construction projects)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies	>\$10,000 if 49 CFR Part 18 applies
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000	>\$150,000	>\$150,000 (for steel, iron, manufactured products)
Resolution of disputes, breaches, or other litigation	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air

Addendum 1

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000 (transportation services excepted)	>\$100,000	>\$100,000 (including ferry vessels)	
Bonding				>\$100,000	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations			
Patent Rights	Research & development				
Rights in Data and Copyrights requirements	Research & development				
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met	All if threshold for DBE program met

PROVISION	TYPE OF PROCUREMENT
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Addendum 1

	Professional Services/A&E	Operations/ Management/ Subrecipient	Rolling Stock Purchase	Construction	Materials & Supplies
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS projects	ITS projects	ITS projects	ITS projects	ITS projects
ADA Access	A&E	All	All	All	All
Veterans Employment				All	

ATTACHMENT 3.1
FEDERAL TRANSIT ADMINISTRATION CLAUSES

APPROPRIATION AND THE AVAILABILITY FUNDING: The Contractor acknowledges and understands that this contract is funded in whole or in part by the Federal Transit Administration (FTA) and administered by the County. Both the County and the Contractor are Parties to this Contract. In accordance with the Colorado Constitution, Article X, Section 20, and the County Charter, performance of the County's obligations under this Contract is expressly subject to appropriation of funds by the FTA and/or the County's Board of County Commissioners for this contract and the availability of those appropriated funds for expenditure. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the County's obligations under this Contract, or appropriated funds may not be expended due to the County, Constitutional or the FTA spending limitations, then the County may terminate this Agreement without compensation to the Contractor. Performances of the Contractor's obligations under this contract are expressly subject to appropriation of funds by the County and/or the FTA and the availability of those funds for the payment of obligations incurred under this contract. Further, in the event that County and/or FTA funds are not appropriated in whole or in part sufficient for performance of the Contractor's obligations under this Contract, or appropriated funds may not be expended due to legal limitations on non-availability, then the County may terminate this Contract without compensation to the Contractor.

NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

Addendum 1

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

ACCESS TO RECORDS AND REPORTS

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

CIVIL RIGHTS LAWS AND REGULATIONS

The County is an Equal Opportunity Employer. As such, the County agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the County agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Addendum 1

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this

Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Mesa County requests which would cause Mesa County to be in violation of the FTA terms and conditions.

ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

(Procurements exceeding \$10,000)

TERMINATION PROVISIONS

a. **Termination for Convenience (General Provision)** The County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County to be paid the Contractor. If the Contractor has any property in its possession belonging to the County, the Contractor will account for the same, and dispose of it in the manner the County directs.

b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the County may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the County that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the County, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

c. **Opportunity to Cure (General Provision)** The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 10 calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to the County's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) calendar days after receipt by Contractor of written notice from the County setting forth the nature of said breach or default,

the County shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the County from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the County shall not limit the County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) The County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of the County's goods, the Contractor shall, upon direction of the County, protect and preserve the goods until surrendered to the County or its agent. The Contractor and the County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the County may terminate this contract for default. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the County, acts of another Contractor in the performance of a contract with the County, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within ten (10) calendar days from the beginning of any delay, notifies the County in writing of the causes of delay. If in the judgment of the County, the delay is excusable, the time for completing the work shall be extended. The judgment of the County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the County.

i. Termination for Convenience or Default (Architect and Engineering) The County may terminate this contract in whole or in part, for the County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the County, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the County may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the County.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.

j. Termination for Convenience of Default (Cost-Type Contracts) The County may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the County or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the County), or property supplied to the Contractor by the County. If the termination is for default, the County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the County the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the County determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the County after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(Procurements exceeding \$25,000)

DEBARMENT AND SUSPENSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;

Addendum 1

- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the County. If it is later determined by the County that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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.

(Procurements exceeding \$150,000 when tangible property or construction will be acquired)

BUY AMERICA REQUIREMENTS - 49 U.S.C. 5323(j); 49 CFR Part 661

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are 100 percent produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7.

Manufactured goods must be 100 percent produced in the U.S. A manufactured good is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) All of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content in fiscal year 2017, 65 percent domestic content in fiscal years 2018 and 2019 and 70 percent domestic content in fiscal year 2020 and each fiscal year thereafter.

A bidder or offeror must submit to the County the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. First tier contractors are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

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Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

VIOLATION AND BREACH OF CONTRACT

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the County. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the County. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the County is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

(Procurements exceeding \$100,000 by statute, including subcontractor bids of \$100,000 or more)

LOBBYING RESTRICTIONS

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. 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 of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, 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

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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 of 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 sub-awards at all tiers (including subcontracts, sub-grants, 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 by section 1352, title 31, U.S. Code. 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.

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

CLEAN AIR REQUIREMENTS

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. 7401–7671q).

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671)
- 5) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA

CLEAN WATER REQUIREMENTS

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. 1251–1387).

- 1) It will not use any violating facilities;

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- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).
- 5) The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

(Procurements involving property that may be transported by ocean vessel for rolling stock, construction, and materials & supplies contracts)

CARGO PREFERENCE

Use of United States-Flag Vessels - The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

(Procurements involving foreign transport or travel by air)

FLY AMERICA REQUIREMENTS

a) *Definitions.* As used in this clause:

“**International air transportation**” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“**U.S.-flag air carrier**” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to

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disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(Construction procurements over \$2,000, including ferry vessels)

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the

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Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards

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Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and

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(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the County may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or

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development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the County for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the

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"Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to

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utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(Construction procurements over \$100,000, including ferry vessels)

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the

standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA 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 provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

(Operations/management/subrecipient and rolling stock procurements over \$100,000)

CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

(Construction procurements over \$100,000, including ferry vessels)

BONDING REQUIREMENTS

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to County and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described there under.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by County to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of County.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of County, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of County's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the County as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense the County for the damages occasioned by default, then the undersigned bidder agrees to indemnify the County and pay over to County the difference between the bid security and the County total damages, so as to make the County whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the County determines that a lesser amount would be adequate for the protection of the County.
2. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract

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price. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, the County may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the County's interest.

(a) The following situations may warrant a performance bond:

1. The County property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the County determines that a lesser amount would be adequate for the protection of the County.

2. The County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the County's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The County shall determine the amount of the advance payment bond necessary to protect the (County).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The County shall determine the amount of the patent indemnity to protect the County.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to County, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

(A&E for new buildings and additions; construction of new buildings and additions)

SEISMIC SAFETY

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

(Procurements for transit operations funded with Section 5307, 5309, 5311 or 5316 funds)

PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

(All operations/ management/ subrecipient procurements)

CHARTER BUS REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);

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2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

SCHOOL BUS REQUIREMENTS

School Bus Operations: The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

(Procurements for transit operations funded with Section 5307, 5309 or 5311 funds)

DRUG AND ALCOHOL TESTING

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its

compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Colorado, or the County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process.

The Contractor agrees further to certify annually its compliance with parts 655 before March 1 and to submit the Management Information System (MIS) reports before March 1 to the Mesa County Regional Transportation Planning Office. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor agrees further to submit for review and approval within 60 days of contract award a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to the County's review of the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium.

(Procurements for research & development)

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, NCTD or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may NCTD or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

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(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royaltyfree, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by NCTD or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, NCTD and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for NCTD or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, NCTD and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by NCTD or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither NCTD nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by NCTD or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the

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requirements of subsections (b), (c), and (d) of this clause, provided that NCTD or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, NCTD and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA

(Construction procurements more than \$10,000)

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS FOR CONSTRUCTION ACTIVITIES

In addition to the foregoing, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:

- (a) U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60, and
- (b) Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246, Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,

(All procurements)

DISADVANTAGED BUSINESS ENTERPRISES

1. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. Mesa County’s overall goal for DBE participation is 1%. A separate contract goal has not been established for this procurement.
2. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate, which may include, but is not limited to:
 - (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).
3. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
4. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from Mesa County. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.
5. The contractor must promptly notify the County, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of

work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Mesa County.

For this solicitation, the County has *not* established a race- or gender- *conscious* DBE participation goal. The County extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The County uses race- and gender-*neutral* measures to facilitate participation by DBEs. The County *encourages* each Offeror to voluntarily subcontract with DBEs to perform part of the work—a Commercially Useful Function—that Offeror might otherwise perform with its own forces. **This RFP requires outreach efforts to DBEs as outlined below.**

A. APPLICABLE FEDERAL REGULATIONS. This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the County must track and report DBE participation that occurs as a result of any subcontract, procurement, joint venture (JV), or other arrangement involving a DBE. For this reason, the Successful Offeror shall provide all relevant information to enable the required reporting.

B. COUNTING DBE PARTICIPATION. The County will count DBE participation as authorized by federal regulations. A summary of these regulations can be found at <https://www.codot.gov/business/civilrights/dbe>.

C. DBE CERTIFICATION. *Only* firms (1) certified by CDOT, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the County's tracking and reporting obligations to USDOT.

D. REQUIRED OUTREACH EFFORTS: The County has implemented outreach requirements for this Contract. Specifically, each Offeror shall: (1) identify DBE participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from DBEs; (3) evaluate DBE proposals; and (4) communicate selection decisions to DBEs, including each rejection of a proposal. If a Offeror fails to conduct these Outreach Efforts or fails to submit the required documentation of Offeror's Outreach Efforts, the County may determine that the Offeror's submittal is nonresponsive. A determination of nonresponsiveness disqualifies Offeror from further consideration for the Contract award.

E. SUBMITTAL REQUIREMENTS: Outreach-Efforts documentation due with initial qualifications-based submittal.

Attachment A. Each Offeror shall complete and submit Attachment A documenting its diligent, good-faith Outreach Efforts. Attachment A must be submitted with the initial qualifications-based submittal. Each Offeror shall list in Attachment A all DBEs contacted by Offeror in preparing its submittal. Each Offeror shall also provide the following minimum information to document its Outreach Efforts. The DBE Liaison Officer will consider this information to determine whether Offeror has demonstrated the required Outreach Efforts:

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- 1) Each business's full legal name and contact information;
- 2) Scope of work solicited (brief description, percentage of contract value);
- 3) Solicitation method (personal contact, telephone, fax, e-mail, other);
- 4) Selection process; and
- 5) Communication of selection outcome to each participant.*

* Offeror shall provide supporting documentation that shows Offeror has communicated its final selection decisions and outcomes to all DBEs, including those not chosen to participate in this Contract.

Each Offeror shall complete Attachment A in accordance with the following instructions.

- 1) Each Offeror shall actively contact DBEs for each scope of work or business opportunity selected for Outreach Efforts (Columns A and B).
- 2) Offeror's contacts with DBEs should occur well before the deadline for the initial qualifications-based submittal to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Contract.
- 3) Offeror shall ask each firm to indicate the number of its employees (Column A).
- 4) For each DBE's annual gross receipts, Offeror shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure from the firm (Column A).
- 5) If Offeror does not select a DBE to participate in the Contract, Offeror shall explain the reason why (Column D).
- 6) Offeror shall notify each DBE contacted whether or not Offeror selected the firm. Offeror shall notify all firms not selected, and Offeror shall state when (date) and how (method) the selection outcome was communicated to each firm (Column E).

Supporting Documentation. Each Offeror shall complete and submit supporting documentation of its Outreach Efforts related to Attachment A.

- a. Offeror shall submit with Attachment A—on the due date for Attachment A—all supporting documentation of Offeror's contacts with DBEs for each scope of work or business opportunity selected for Outreach Efforts.
- b. This documentation must include (1) descriptions of scopes of work and business opportunities identified for DBE participation, and (2) a copy of the actual solicitation sent to interested DBEs. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce.
- c. Offeror shall submit documentation that establishes how Offeror communicated its selection decisions and outcomes to each DBE not selected for this Contract. This documentation may be in the form of a letter, e-mail, or telephone log. The documentation must show the name of the person contacted and the date.

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d. For all of the above documentation, if Offeror uses a blast e-mail or fax format, the documentation submitted must include a copy of the e-mail or fax, and Offeror must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of transmission. For telephone contacts, Offeror shall document the date and time of the call and the names of the respective persons representing Offeror and the DBE.

F. Documentation due within seven days after final negotiations:

Attachments B-1 And B-2. Within seven days after final negotiations with the County, the Offeror selected for negotiations shall complete and submit Attachments B-1 and B-2. Offeror must show diligent, good-faith Outreach Efforts and provide information regarding its DBE selection decisions and outcomes for all negotiations with DBEs. Attachment B-1 must contain the names of all DBEs reported as “selected” on Attachment A, Column D, and all supporting documentation (if applicable).

Instructions for completing Attachments B-1 and B-2:

1. Attachment B-1 Negotiations with DBEs. The Offeror shall provide the following information in Attachment B-1, which the DBE Liaison Officer will evaluate to determine whether Offeror negotiated diligently and in good faith with the DBEs identified in Attachment A, Column D, as potential participants in the Contract’s business opportunities:

- 1) Each business’s full legal name and contact information;
- 2) Scope of work to be performed (brief description, percentage of contract value);
- 3) Type of agreement;
- 4) Agreement amount; and
- 5) Communication of final selection outcomes to participants.*

*The Successful Offeror shall provide supporting documentation that shows Offeror has communicated its final selection decisions and outcomes to all DBEs, including those not chosen to participate in this Contract.

The Successful Offeror shall complete all appropriate boxes in Attachment B-1 and shall indicate the firms with which Offeror has negotiated, including firms that Offeror proposes will participate in and perform part of the Contract. Supporting documentation may include copies of e-mails, letters, faxes, or contact logs stating the name of the firm, date and time of communication, and the identity of the person contacted.

2. Attachment B-2 DBE Utilization Commitment. The Successful Offeror shall sign and submit Attachment B-2, which commits the Successful Offeror to the County Agency as follows:

- A) The firms indicated as selected in Attachment B-1 will participate in the Contract;
- B) The Successful Offeror will comply with the Race- and Gender-Neutral post-award requirements;
- C) Any and all changes, substitutions, or termination of a DBE firm must first be authorized by the DBE Liaison Officer before implementation; and

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D) The proposed total DBE participation percentage is true and correct.

Offeror shall ensure that the percentages proposed for DBE participation on Attachment B-1 equal the total percentage proposed in Attachment B-2.

If the Successful Offeror fails to timely submit a completed copy of Attachment B-1 or Attachment B-2, or fails to provide the required supporting documentation for Attachment B-1, the County Agency may determine that Offeror's proposal is nonresponsive. A determination of nonresponsiveness disqualifies Offeror from further consideration for the Contract award.

3. Failure To Meet Outreach Requirements. The DBE Liaison Officer will determine, in writing, whether Offeror has satisfied all outreach requirements. If the DBE Liaison Officer determines that Offeror has failed to satisfy the outreach requirements, then the DBE Liaison Officer may determine that the submittal is nonresponsive. A determination of nonresponsiveness disqualifies Offeror from further consideration for the Contract award. The County Agency shall send written notice to Offeror stating the basis for DBE Liaison Officer's decision.

4. Administrative Reconsideration. If the DBE Liaison Officer determines that Offeror did not properly complete Attachment A or Offeror failed to demonstrate sufficient Outreach Efforts or failed to submit required documentation, then the County will permit Offeror to request for reconsideration on this determination. In its request for reconsideration, Offeror may clarify its submittal. But Offeror may not submit or refer to new or revised documents or information. The County will only reconsider the original submittal as clarified in the request for reconsideration.

If Offeror requests reconsideration of the DBE Liaison Officer's determination of nonresponsiveness based on insufficient Outreach Efforts or insufficient documentation, then Offeror must provide written notice to the County within three business days of the County's notice of disqualification to Offeror. The request for reconsideration should be e-mailed to the Procurement Officer and the DBE Liaison Officer and also mailed to:

Mesa County RTPO
ATTN: DBE Liaison Officer
Dept. 5093, PO Box 20,000
Grand Junction, CO 81502-5001

G. POST-AWARD COMPLIANCE REQUIREMENTS

1. Subcontracting Commitment. Promptly after Contract award, the Successful Offeror shall submit to the County a list of all subcontractors and copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between the Successful Offeror and any DBE.

The Successful Offeror shall not terminate any DBE Subcontracts, and the Successful Offeror shall not alter the scope of work or reduce the Subcontract amount, without the DBE

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Liaison Officer's prior written approval. Any request to alter a DBE Subcontract must be submitted in writing to the DBE Liaison Officer before any change is made. If the Successful Offeror fails to do so, the County may declare Offeror in breach of contract.

2. Relief From Proposed DBE Utilization. After Contract award, the County will not grant relief from the proposed DBE utilization except in extraordinary circumstances. The Successful Offeror's request to modify participation must be in writing to the DBE Liaison Officer. The DBE Liaison Officer has final discretion and authority to determine if the request should be granted.

Offeror's written request must set forth the amount of relief sought, evidence that demonstrates why relief is necessary, and any additional relevant information that the DBE Liaison Officer should consider. The Successful Offeror shall include with the request all documentation of Offeror's attempts to subcontract with the DBE and any other action taken to locate and solicit a replacement DBE.

If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the County will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Likewise, any work performed under a Contract extension granted by the County may not be counted as DBE participation.

3. DBE Substitutions. If the DBE was approved by the County, but the firm subsequently loses its DBE status before execution of a contract, the DBE Liaison Officer will consider whether or not the Successful Offeror has exercised diligent and good-faith efforts to find another DBE as a replacement. The Successful Offeror shall notify the DBE Liaison Officer in writing of the necessity to substitute a DBE and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE may not occur before the DBE Liaison Officer's written approval has been obtained.

4. Prompt Payment Of Subcontractors. Within seven days of the Successful Offeror's receipt of a County progress payment that includes amounts for the Offeror's Subcontractors, suppliers, or subconsultants, the Offeror shall pay the Subcontractors, suppliers, and subconsultants the respective amounts allowed for satisfactory performance of their work.

If the County reduces the Successful Offeror's retention, the Offeror shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work. Under the prompt-payment provisions of 49 CFR Part 26, the Successful Offeror must ensure prompt and full payment of retentions to Subcontractors and suppliers when their work is complete, the County has accepted the work, and the County has paid the Successful Offeror for the work. The Successful Offeror shall pay each Subcontractor's and supplier's retention no later than 30 days after the County pays Offeror.

If the Successful Offeror diverts any payment received for a DBE's work performed on the Contract or fails to reasonably account for the application or use of the payment, the County

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may declare the Successful Offeror in breach of contract. If the Successful Offeror fails to make payments under these provisions, the County may take any one or more of the following actions:

1. Declare the Successful Offeror in breach of contract;
2. Withhold future payments, including retention, until proper payment has been made to all Subcontractors and suppliers;
3. Reject the Successful Offeror's future bids on County contracts for a period not to exceed one year from the substantial-completion date of this Contract; and/or
4. Terminate the Contract.

Nothing in this section prevents the Successful Offeror from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, or other claims arising under the Subcontract.

H. RECORDS & REPORTING REQUIREMENTS

1. Records. During performance of the Contract, the Successful Offeror shall keep all records necessary to document DBE participation. The Successful Offeror shall provide the records to the County within 72 hours of the County's request and at final completion of the Contract. The County will prescribe the form, manner, and content of reports. The required records include:

1. A complete listing of all Subcontractors and suppliers on the project;
2. Each Subcontractor's and supplier's scope of work performed;
3. The dollar value of all subcontracting work, services, and procurement;
4. Copies of all executed Subcontracts, purchase orders, and invoices; and
5. Copies of all payment documentation.

2. Reports. By May 1 (for reporting period October 1- March 31) and November 1 (for reporting period April 1 - September 30) of each year, the Successful Offeror must complete Attachment C, include the following documentation and payment information, and submit this report to the DBE Liaison Officer.

1. The total of all payments received from the County during the previous month.
2. All payments made to DBEs during the previous month.
3. Copies of all Subcontractors' subcontracts executed with DBEs utilized during the previous month.

This information will document DBE participation that occurred during each payment-request period throughout the Contract's duration. Copies of all DBEs' payment requests and invoices must be submitted for each report period.

Before the County processes the Successful Offeror's final payment, the Successful Offeror shall submit to the County a final certification of full and final payment to each Subcontractor in the form prescribed by the County. The form must be completed and certified by the Successful Offeror's and each Subcontractor's duly authorized agents.

PROMPT PAYMENT TO SUBCONTRACTORS

1. The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than five (5) business days after the Contractor has received payment from Mesa County.
2. In addition, all Retainage amounts must be paid by the Contractor to the Subcontractor no later than fourteen (14) business days after the Subcontractor has, in the opinion of the Contractor, satisfactorily completed its portion of the Work.
3. A delay in or postponement of payment to the Subcontractor requires good cause and prior written approval Mesa County.
4. The Contractor is required to include, in each subcontract, a clause requiring the use of appropriate arbitration mechanisms to resolve all payment disputes.
5. Mesa County will not pay the Contractor for work performed unless and until the Contractor ensures that the Subcontractors have been promptly paid for the work they have performed under all previous payment requests, as evidenced by the filing with Mesa County of lien waivers, canceled checks (if requested), and the Contractor's sworn statement that it has complied with the prompt payment requirements. Prime Contractors must submit a prompt payment affidavit, (form to be provided by Mesa County) which identifies each subcontractor (both DBE and non-DBE) and the date and amount of the last payment to such subcontractor, with every payment request filed with Mesa County, except for the first payment request, on every contract with Mesa County. (See below for *Prompt Payment Affidavit*).
6. Failure to comply with these prompt payment requirements is a breach of the Contract, which may lead to any remedies permitted under law, including, but not limited to, Contractor debarment.

Reporting Requirements During the Term of the Contract

1. The bidder shall, within five (5) business days of contract award, or prior to any work being performed, execute formal subcontracts or purchase orders with the DBE firms included in the bid. These written agreements shall be made available to Mesa County upon request. All contracts between the bidder and its subcontractors must contain a prompt payment clause.
2. During the term of annual contracts, the bidder shall submit regular "Status Reports of DBE Subcontract Payments" in a form acceptable to Mesa County. The frequency with which these reports are to be submitted will be determined by Mesa County, but in no event will reports be required less frequently than quarterly. **In the absence of written notice from Mesa County, the bidder's first "Status Report of DBE Subcontract Payments" will be due ninety (90) days after the date of contract award, with additional reports due quarterly thereafter.**
3. In the case of a one-time procurement with either a single or multiple deliveries, a "Status Report of DBE Subcontract Payments," in a form acceptable to Mesa County, indicating final DBE payments shall be submitted directly to Mesa County. The information must be submitted prior to or at the same time as the bidder's final invoice to Mesa County. **Failure to follow these directions may delay final payment.**

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- 4. The address for Mesa County’s DBE Program, is: Mesa County Regional Transportation Planning Office (RTPO), Attn: DBELO, PO Box 20,000, Dept 5093, Grand Junction, CO 81502-5001.

PROMPT PAYMENT AFFIDAVIT

Contractor will place a check in the appropriate box below that applies to this payment request.

Re: Payment Request No. _____

I, _____ (Name), the _____ (Title - e.g., President, Vice President, etc.) of _____ ("Company"), do state the following with regard to payments made under Contract No. _____ ("Contract"):

- 1. *____Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. _____, were paid no later than five (5) business days after Company received payment from Mesa County.*
- 2. *____Copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to Mesa County RTPO. In addition, Company has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by Mesa County. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to Mesa County RTPO may cause the Payment Request to be rejected Mesa County.)*
- 3. *____All retainage amounts withheld from any subcontractor who satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than fourteen (14) business days after it satisfactorily completed its work, whether or not Mesa County has paid said retainage amounts to Company. Attach a copy of the cancelled check evidencing payment of each retainage amount.*
- 4. *____There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from Mesa County RTPO.*

Attach a copy of the written approval from the Mesa County RTPO.

Company Name

Signature

Print Name

Date: _____

Subscribed and sworn to before me this _____ day of _____ 20__.

Notary Public

(Contracts for items designated by EPA, when procuring \$10,000 or more per year)

RECYCLED PRODUCTS

Recovered Materials: The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

(All procurements except professional services, materials and supplies)

ADA ACCESSIBILITY

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.*; DOT regulations, —Transportation Services for Individuals with Disabilities (ADA), 49 CFR Part 37; and Joint ATBCB DOT regulations, —Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles, 36 CFR Part 1192 and 49 CFR Part 38. Notably, DOT incorporated by reference into Appendix A of its regulations at 49 CFR Part 37 the ATBCB’s —Americans with Disabilities Act Accessibility Guidelines (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities. DOT also added specific provisions to Appendix A of 49 CFR Part 37 modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and the DOT amendments.