



County of Los Angeles
CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

October 30, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC WORKS: AVOCADO HEIGHTS AND
BASSETT FLEX-ROUTE SHUTTLE
FEDERAL JOB ACCESS AND REVERSE COMMUTE GRANT
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
(SUPERVISORIAL DISTRICT 1)
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Accept up to a maximum of \$248,854 in Federal Job Access and Reverse Commute grant funds from the Los Angeles County Metropolitan Transportation Authority as the pass-through agency for the Federal Transit Administration. This grant will partially fund the operating hours of the Avocado Heights and Bassett Flex-Route Shuttle Service.
2. Authorize the Director of Public Works or his designee to execute a Memorandum of Understanding with the Los Angeles County Metropolitan Transportation Authority and to execute any certifications and requests for reimbursement on behalf of the County.
3. Authorize the Director of Public Works or his designee to act as an agent for the County to execute amendments as may be necessary to complete the project as described in this letter, including extensions of time, minor changes in project scope, and alterations in the project budget or grant amount of up to 10 percent, subject to approval of such documents as to form by County Counsel.

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to accept up to a maximum of \$248,854 in grant funds from the Los Angeles County Metropolitan Transportation Authority (Metro) under the Federal Job Access and Reverse Commute grant program. The Federal Job Access and Reverse Commute grant will fund 50 percent of the cost of the Avocado Heights and Bassett Flex-Route Shuttle Service hours for two years.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs that we provide Service Excellence (Goal 1), Fiscal Responsibility (Goal 4), and Community Services (Goal 6). Accepting the Federal Job Access and Reverse Commute grant will strengthen the County's fiscal capacity by actively seeking grant funds to augment the County's funding sources providing convenient, easy access transit services, and improving the quality of life for the residents of Bassett and Avocado Heights areas.

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

The estimated cost for the operation of the Avocado Heights and Bassett Flex-Route Shuttle is \$497,708 for two years. Following are the budget requirements for Fiscal Years 2007-08 and 2008-09 reflecting the receipt of grant funds for the full two-year period:

	Cost of Service	Grant Reimbursement	County Share
FY 2007-08	\$250,604	\$125,302	\$125,302
FY 2008-09	\$247,104	\$123,552	\$123,552

The necessary funds to finance the County's share of the cost are available in the First Supervisorial District's Proposition A Local Return Transit Program included in the Fiscal Year 2007-08 Transit Enterprise Fund Budget and the proposed Fiscal Year 2008-09 Transit Enterprise Fund Budget to fully fund this service for the initial 2-year period. After the initial 2-year period, full funding for shuttle service will be provided by the First Supervisorial District's Proposition A Local Return Transit Program.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On January 30, 2007, your Board approved Amendment No. 1 to Contract No. 75502 with Southland Transit, Inc., to implement Avocado Heights and Bassett Flex-Route Shuttle service. The service commenced on January 31, 2007. The service route is approximately nine miles long and includes stops at local schools, parks, and shopping centers. The shuttle service also provides connections to regional transit services in the vicinity of Avocado Heights and Bassett. The Avocado Heights and Bassett Flex-Route Shuttle Service operates Monday through Saturday between 7 a.m. and 7 p.m.

On July 11, 2000, your Board approved guidelines to be followed in the acceptance of any grant of \$100,000 or more. These guidelines include a requirement that the County departments prepare a Grant Management Statement for your review prior to carrying out the activities covered under the grant. Accordingly, the Grant Management Statement for this grant is attached for your review.

A copy of Metro's proposed Memorandum of Understanding (MOU) is attached. The final MOU will be approved as to form by County Counsel prior to execution by the Director of Public Works or his designee.

ENVIRONMENTAL DOCUMENTATION

On January 30, 2007, your Board found the Avocado Heights and Bassett Flex-Route Shuttle Service to be statutorily exempt from the California Environmental Quality Act pursuant to Public Resources Code Section 21080 (b) (10).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

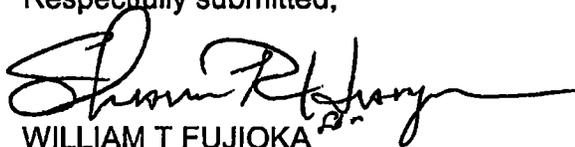
Accepting the Federal Job Access and Reverse Commute grant funds for the Avocado Heights and Bassett Flex-Route Shuttle Service will reduce the net operating costs for the shuttle service by up to 50 percent for two years while providing convenient transit services for area residents.

The Honorable Board of Supervisors
October 30, 2007
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CONCLUSION

Please return two adopted copies of the letter to the Department of Public Works,
Programs Development Division.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William T. Fujioka", written in a cursive style.

WILLIAM T FUJIOKA
Chief Executive Officer

WF: DLW
SA:dv

Attachments (2)

c: County Counsel
Department of Public Works (Fiscal)

Los Angeles County Chief Administrative Office

Grant Management Statement for Grants \$100,000 or More

Department: Public Works		
Grant Project Title and Description: Avocado Heights, Bassett, West Valinda Shuttle		
The flex-route shuttle connects the unincorporated areas of Avocado Heights, Bassett, and West Valinda to regional transit services providing transportation to job training, employment, shopping, health care, and childcare facilities. The shuttle is a flexible service departing approximately every half hour between 7 a.m. and 7 p.m., Monday through Saturday. The grant will fund 50 percent of the cost of the shuttle service hours for up to two years, limited by the Federal Transit Administration (FTA) expenditure deadline.		
Funding Agency	Program (Fed. Grant #/State Bill or Code #)	Grant Acceptance Deadline
Metro	Job Access and Reverse Commute	N/A
Total Amount of Grant Funding: \$248,854		County Match: \$248,854*
Grant Period: 2 years	Begin Date: Upon Board acceptance and MOU execution	End Date: June 30, 2009
Number of Personnel Hired Under This Grant:	Full Time: 0	Part Time: 0
Obligations Imposed on the County When the Grant Expires		
Will all personnel hired for this program be informed this is a grant-funded program? N/A	Yes ___	No ___
Will all personnel hired for this program be placed on temporary ("N") items? N/A	Yes ___	No ___
Is the County obligated to continue this program after the grant expires?	Yes ___	No <u>x</u>
If the County is not obligated to continue this program after the grant expires, the Department will:		
a.) Absorb the program cost without reducing other services	Yes <u>x</u>	No ___
b.) Identify other revenue sources (describe): Public Works will utilize funding from the First Supervisorial District's Proposition A Local Return Transit Program available in the Transit Enterprise Fund to continue the service upon direction from the First Supervisorial District.	Yes <u>x</u>	No ___
c.) Eliminate or reduce, as appropriate, positions/program costs funded by the grant.	Yes ___	No <u>x</u>
Impact of additional personnel on existing space:		
N/A		
Other requirements not mentioned above: MOU needs to be executed ASAP due to current FTA expenditure deadline of June 30, 2009.		
*Hard costs=\$226,390 Soft costs=\$22,464		

Department Head Signature Donald Wolf

Date: 10/18/07

**JOB ACCESS AND REVERSE COMMUTE (JARC)
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is entered into between the Los Angeles County Metropolitan Transportation Authority ("METRO") and Los Angeles County Department of Public Works (the "Agency") on this date of ~~June 30, 2007~~ for Avocado Heights/Bassett Shuttle (the "Project").

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WHEREAS, the Metro Board of Directors, at its January 22, 2004 meeting, approved the staff recommended Job Access and Reverse Commute (JARC) projects and authorized the Metro's Chief Executive Officer to submit a JARC grant application to and enter into a grant with the Federal Transit Administration (FTA) as a pass-through agency for the proposed projects (the "Federal Grant"). The Metro Board also authorized the Metro's Chief Executive Officer to negotiate and execute JARC memorandum of understanding for pass-through funding with the various project sponsors after the FTA awards the grant, and;

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WHEREAS, The total cost for the Project described on the Scope of Work attached as Attachment "A" hereto is estimated to be \$497,708 ("Estimated Cost").

WHEREAS, The Agency has agreed to provide the required Local match ("Match") and any additional funding required to complete the Project.

WHEREAS, Metro shall pass along the FTA funds for the Project and assumes no responsibility for the funding of any portion of the Project.

WHEREAS, The Agency understands Federal Funds provided herein are contingent upon the FTA's approval of the grant application and are subject to the federal lapsing policy.

WHEREAS, The parties desire to execute this Agreement to authorize Metro to pass along the Federal Funds to Agency under the terms and conditions contained herein.

NOW THEREFORE, the parties hereby agree as follows:

1. CONDITIONS

- 1.1 The Agency shall use the Funds, as described below, to complete the Project as described in the Scope of Work in Attachment A. The Funds, as granted under this MOU, can only be used towards the completion of this Scope of Work. The Agency shall not use the Funds to substitute for any other funds or projects not specified in this MOU. The Scope of Work includes a description of the Project's location, a detailed Project description, specific description of the Project line item budget, and schedule of work.

MOU.PT001009

- 1.2 The Agency shall use the Funds in accordance with the Program Budget attached to this MOU as Attachment B. The Budget shows the Project's entire financial commitment including the Agency's Funding Commitment (Local Match) as well as the fiscal year and month that the Funds will be expended.
- 1.3 The Agency understands the Funds are federal funds and FTA and DOL requirements apply to the use of Funds. All FTA and DOL requirements and guidelines as summarized in the FTA Master Agreement are incorporated by reference herein as part of this Agreement. Circular 4220.1 E is attached as Attachment C. These requirements include, but are not limited to:
- (a) assurances of legal authority.
 - (b) certification of non-debarment, suspension or termination.
 - (c) certification of a drug-free workplace.
 - (d) intergovernmental review.
 - (e) Civil Rights review, including Title VI Program review.
 - (f) Disadvantaged Business Enterprise (DBE) assurances.
 - (g) Disability nondiscrimination (ADA).
 - (h) Office of Management and Budget (OMB) certification.
 - (i) Lobbying certifications.
 - (j) Buy America requirements.
 - (k) NEPA environmental review.
 - (l) Single audit requirements.
 - (m) Circular 9300.1A (Section 5309).
 - (n) Circular 5010.1 C (Grants Management).
 - (o) Circular 4220.1E (Third-Party Contracting)
 - (p) Section 5333(b) of the Federal Transit Statute
- 1.4 During the term of this MOU, the Agency agrees to contribute at least the statutorily or other required local contribution of matching funds (other than federal funds), if any is specified within this Agreement or any attachments hereto, toward the actual costs of the Project.
- 1.5 Not more frequently than once a month, but at least quarterly, the Agency will prepare and submit to the METRO a certified Request for Reimbursement for actual allowable Project costs incurred and paid for by the Agency consistent with the Scope of Work document. Advance payments by the METRO are not allowed.
- 1.6 If applicable, the first Request for Reimbursement shall also be accompanied by a report describing any tasks specified in the Scope of Work document which were accomplished prior to the effective date of this Agreement, which costs could be credited toward the required local contribution described herein provided that METRO has received prior federal approval for such expenditures.
- 1.7 If any amounts paid to the Agency are disallowed or not reimbursed by the FTA for any reason, the Agency shall remit to METRO the disallowed or non-

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reimbursed amount(s) within 30 days from receipt of METRO's notice. All payments made by METRO hereunder are subject to the audit provisions contained herein and within the Federal Grant.

- 1.8 This is a one time only grant subject to the terms and conditions agreed to herein. This grant does not imply nor obligate any future funding commitment on the part of METRO.
- 1.9 The term of this Agreement shall commence upon the date first referenced above, and shall terminate upon termination of the Federal Grant, unless terminated earlier as provided herein. The last expenditure date under this Agreement is two years after the effective date of this MOU.
- 1.10 The Agency shall be subject to and shall comply with all applicable requirements of the METRO, FTA and DOL regarding Project reporting and audit requirements. The Agency shall use the MOU number MOU.PT001009 on all correspondence.
- 1.11 The Agency shall submit the following Reports and Certifications to the METRO for the duration of the Project:
- Quarterly Narrative and Certified Financial Report on Project Progress and any other Job Access and Reverse Commute Reports as requested.

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- 1.12 Unless written notification is otherwise provided by METRO, the effective date and start date of reimbursable activities is the FTA grant award date. Actual reimbursement of eligible work cannot occur until the METRO and the Agency execute this agreement and the METRO has entered into the Federal Grant agreement.

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- 1.13 In the event this Agreement is not executed and/or evidence of timely implementation is not provided as described in Attachment A of this Agreement, the Project will be reevaluated by Metro and the Federal Funds may be deobligated consistent with FTA requirements. In the event the Federal Funds are deobligated, this Agreement shall automatically terminate.

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2. TRANSFER OF FUNDS

- 2.1 To the extent that METRO receives funds under the Federal Grant for the Project, the METRO shall reimburse the Agency for its eligible expenses up to the maximum amount of \$248,854 (the "Funds") for the Project subject to the terms and conditions contained herein.
- 2.2 METRO shall transfer the Funds to the Agency on reimbursement basis only. No advance of Funds shall be allowed. The Agency shall submit monthly invoices with supporting documentation to the METRO identifying work completed and the amount expended by the Agency. Items eligible for reimbursement are discussed in the Project Budget as Attachment B.

MOU.PT001009

- 2.3 Each Request for Reimbursement will report the total of Project expenditures and will specify the percent and amount of Funds to be reimbursed. The Request for Reimbursement shall be accompanied by a report describing the overall work status and progress on Project tasks.
- 2.4 The METRO shall reimburse the Agency the allowed amount of the invoice as approved by the METRO and in accordance with this MOU.
- 2.5 The Agency is responsible for all costs in excess of the Funds incurred as a result of this Project. Under no circumstances will the total amount of money that the METRO reimburses the Agency exceed the amount of the Funds.
- 2.6 Agency administration direct costs may be invoiced for up to 10% of the actual grant-eligible project costs
- 2.7 METRO shall not be responsible to provide any funding to substitute for the Federal Grant Funds in the event the Grant is withdrawn, recalled or not appropriated for any reason. In the event the Grant is closed, the Agency will reimburse METRO any Funds paid that were no longer available in the FTA grant award.
- 2.8 The METRO will retain 10% of the invoice amount until the METRO has evaluated the Agency's performance and made a determination that all contract requirements under this Agreement have been satisfactorily fulfilled
- 2.9 Invoices to the METRO shall be addressed to:

Los Angeles County Metropolitan Authority, Accounts Payable
P.O. Box 512296
Los Angeles, CA 90051-0296

- 2.10 Reports and notices to METRO shall be addressed to:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Attn: ~~Ashad Hamideh~~, MS: 99-23-03

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- 2.11 Payments and notices to the Agency shall be addressed to:
Los Angeles County Department of Public Works
Programs Development Division
900 S. Fremont Avenue
Alhambra, CA 91803-1331
Attn : John Huang

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3. PENALTIES

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The METRO reserves the right to terminate this MOU and withhold all payments of Funds in the event of Agency's breach or default of any term or condition contained in this MOU.

4. MISCELLANEOUS

- 4.1 California law shall govern this MOU. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way; unless any of the stated purposes of the MOU would be defeated.
- 4.2 The Agency shall not assign this MOU, or any part thereof, without written consent and prior approval of the METRO Chief Executive Officer or designee, and any assignment without said consent shall be void and unenforceable.
- 4.3 This MOU and FTA DOL Guidelines constitute the entire understanding between parties, with respect subject matter herein. This MOU shall not be amended, nor any provision or breach hereof waived except in writing signed by the parties.
- 4.4 The covenants and agreements of this MOU shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.
- 4.5 METRO and the FTA shall have the right to conduct a financial and compliance audit(s) of the Project. Agency agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with generally accepted accounting principals. The Agency shall reimburse METRO for any expenditure not in compliance with the Scope of Work and/or not in compliance with other terms and conditions of this MOU and FTA Guidelines.
- 4.6 The Agency shall obtain the services of an independent auditor to conduct a single audit of the Project each year in conformance with the provisions of OMB Circular A-133. The Agency shall submit a copy of each single audit to the METRO within 30 days of its completion.
- 4.7 Neither the METRO nor any officer or employee thereof shall be responsible for any damage or liability occurring with any work performed by and or service provided by Agency, its officers, agents employees, and subcontractors under this MOU. Agency shall fully indemnify, defend and hold the METRO, and its officers, agents and employees harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person for damage to or loss of risk of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever arising of the Project, including, without limitations, (i) misuse of the Funds by Agency, or its officers, agents, employees, or subcontractors; (ii) breach of the Agency's

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obligations under this MOU; or (iii) any act or omission of the Agency, or its officers, agents, employees or subcontractors in the performance of the work or the provision of the services, included, without limitation, the Scope of Work, described in this MOU.

- 4.8 Agency in the performance of the work required by this MOU is an independent contractor and not an agent or employee of the METRO. Agency shall not represent itself as an agent or employee of the METRO and shall have no powers to bind the METRO in contract or otherwise.

Avocado Heights/Bassett Shuttle Project Scope of Work

The Avocado Heights and Bassett unincorporated areas are relatively poor. According to the 2000 census, 16.3% of residents in the Avocado Heights and Bassett areas are low-income, and 42.3% of residents live in households with income below the Los Angeles County Community Development Commission low-to-moderate income levels. In five out of seven Census block groups, over 50% of the population are low-to-moderate income, with up to 77% of the population low-to-moderate income in some groups. In addition, 19% of residents in these areas are disabled. Within Los Angeles County, 17.9% of residents are low-income, 44.7% of residents are low-to-moderate income, and 18.2% are disabled. This project will provide a wheelchair-accessible shuttle to connect the unincorporated Avocado Heights and Bassett communities to regional transit service, which will provide welfare recipients and others with transportation to jobs, shopping, health care, and child care facilities located outside the Avocado Heights and Bassett communities. This project will implement one of the recommendations in the 2003 Unincorporated Areas Transit Needs Study (UATNS) prepared by our consultant, Nelson Nygaard.

According to the UATNS, transit service on the major streets of the project service area is not accessible to many residents due to the street grid structure. The circuitous street pattern also discourages social service agencies from serving the area. While only 11% of the population is further than a quarter mile radius from a transit route, the actual traveling distance exceeds that due to the street pattern. Taxicabs and other private transportation providers are beyond the financial reach of most CalWORKS recipients. The low-income residents in Avocado Heights and Bassett are the targeted group for this service.

The proposed shuttle is a flexible service that will depart approximately every half hour between 7 a.m. and 7 p.m., Monday through Saturday, from the intersection of Valley Boulevard and Puente Avenue, which is to be the one designated pick-up location. At this intersection, connections can be made to three different transit lines. From the intersection of Valley Boulevard and Puente Avenue, passengers will be picked up and dropped off at any feasible location within the service area, before returning to the intersection and repeating the cycle. Signs will be posted at key intersections to advertise the service. Since there will be no permanent stops, residents will then be able to call the dispatcher toll-free to arrange for pick-up. Standing pick up locations may be added to the route based on need. One vehicle will be used for the service.

In order to determine the transportation needs and appropriate recommendations for the Avocado Heights and Bassett areas, our consultant coordinated extensively with staff from both Public Works and County Supervisor Gloria Molina's office. In addition, the

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Attachment A

consultant conducted a telephone survey among residents in the area regarding potential transit projects in the Avocado Heights and Bassett communities.

The project conforms with the Department of Public Social Services (DPSS) Welfare to Work Transportation Plan approved by the Los Angeles County Board of Supervisors in 2001. DPSS has given their support to the project. The San Gabriel Valley was identified as an area where transit and job accessibility are low. Providing CalWORKS recipients access to regional destinations will promote self-sufficiency through employment opportunities. This service will connect welfare recipients normally isolated from public transit to regional services and some small employment centers in the region.

PROJECT LOCATION & LIMITS OR SERVICE AREA-The project will serve the unincorporated areas of Avocado Heights and Bassett. The area is surrounded by the cities of Industry, South El Monte, and Baldwin Park.

PROJECT MANAGEMENT-The Avocado Heights/Bassett Shuttle will be operated by a service provided through a contract with Public Works. The contractor will provide the vehicles for the service and employ the drivers. The contract will be administered by the Public Works Project Coordinator, who will enforce the terms of the contract and ensure a high quality of service for all patrons. In addition, consultants may be utilized from time to time to provide additional support.

PROJECT MONITORING AND TRACKING SYSTEM-The contract for the Avocado Heights/Bassett Shuttle will have several provisions to ensure service quality. These include measures such as on-time performance, number of complaints, and preventative maintenance enforcement. Public Works will require the contractor to submit a weekly report on the mechanical condition and operational status of the vehicle. Monitoring will be performed on the route by Public Works staff. If the contractor does not meet the standards of the contract, liquidated damages will be assessed, and follow up monitoring will be conducted to ensure that performance meets all standards stipulated in the contract. Ridership data will be collected on a monthly basis by the contractor and analyzed by Public Works to determine the efficiency and cost effectiveness of the service. Any changes to the service will be made with input from stakeholders.

IMPLEMENTATION MILESTONES- The Avocado Heights/Bassett Shuttle project described in this Scope of Work will be implemented in a timely manner to ensure meeting stated objectives, including ensuring service quality and complying with contract agreements, and to ensure that federal funds are not deobligated for not meeting these requirements. Accordingly, the implementation of the project will achieve the following milestones:

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- October 2006 Complete Scope of Work. Coordinate with Metro and Foothill Transit for service connection and shared stops.
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- November 2006 Prepare brochures, promotional and marketing materials.
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- December 2006 Public Works recommends contractor for approval by County Board of Supervisors.
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- January 2007 Public Works amendment contract with Southland Transit. Contractor will train drivers to operate service. Install shuttle stop signs at designated locations.
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- January 31, 2007 Begin operation of service.
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- April 2007 Mass mail brochures to residents in the community.
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- May 2007 Place surveys in the bus, at parks and libraries to receive public input for any necessary route adjustments.
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- July 2007 Develop an official name and logo for the service.
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- September 2007 Finalize the name and logo for the service.
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- January 2008 Implement any necessary route adjustments.
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- August 2008 Complete route adjustments.
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- January 2009 End of JARC funding.
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PART II. PROJECT FINANCIAL PLAN:

9. TOTAL PROJECT EXPENSES AND FUNDING REQUEST

The cost of the project is \$250,604 in the first year, and \$247,104 for the second year. We are requesting \$125,302 of federal funds, or 50% of the project cost, for the first year and \$123,552 in federal funds for the second year.

The total project cost is \$497,708. The total local share is \$248,854. We are requesting \$248,854 of federal funds.

10. EXTENDED BUDGET DESCRIPTIONS

Capital Costs

No capital costs are required for the vehicles because they will be provided by the contractor.

Signs for service: \$2,000

Purchase and install 20 signs to advertise the service and increase awareness of the service. Signs will be placed near concentration of housing and activities indicating stops for the shuttle. Each sign will have a toll free number that residents can call to arrange for pickup.

Operating Costs

Shuttle contract (one vehicle): \$224,640

The shuttle contract cost is estimated at \$60/hour, for 12 hours of service a day, six days a week. The cost per hour is based on other contracts for similar service executed by Public Works. The cost will be split equally among Public Works (Proposition A funds) and the FTA.

Total Cost for Marketing Materials: \$100

This includes the cost of development and printing of 5,000 brochures, in English and Spanish, for 3,700 households. The materials will also be distributed to major businesses, community centers, and civic facilities.

Total Cost for Postage: \$1,400

This is the cost for a bulk mail permit to send informational brochures to all residences in the Avocado Heights/Bassett service area. Schedules will also be mailed upon request. Four thousand stamps will be required in order to ensure that materials can be mailed to residents after the initial distribution.

Project Administration: \$22,464

This includes contracted service management, monitoring, and reporting. It does not exceed 10% of the total project cost per the FTA regulations.

AVOCADO HEIGHTS/BASSETT SHUTTLE						
First Year Budget	Cost/unit	Units	Local Share	Federal Funds	Total Cost	
Capital Costs						
Signage (purchase and installation)	\$100.00	20	\$1,000	\$1,000	\$2,000	
Operating Costs						
Shuttle Contract (based on the number of service hours)*	\$60.00	3,744	\$112,320	\$112,320	\$224,640	
Marketing material (brochures with schedules)	\$0.02	5,000	\$50	\$50	\$100	
Postage for marketing (number of meter impressions)	\$0.35	4,000	\$700	\$700	\$1,400	
Project Administration (10% of contract cost)			\$11,232	\$11,232	\$22,464	
First Year Subtotal			\$125,302	\$125,302	\$250,604	
Second Year Budget						
Operating Costs						
Shuttle Contract (based on the number of service hours)*	\$60.00	3,744	\$112,320	\$112,320	\$224,640	
Project Administration (10% of contract cost)			\$11,232	\$11,232	\$22,464	
Second Year Subtotal			\$123,552	\$123,552	\$247,104	
Total Project Costs			\$248,854	\$248,854	\$497,708	
* - Service hours:						
One vehicle per service hour						
12 hours per day						
6 days a week						
52 weeks a year						


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Third Party Contracting Requirements

Number C 4220.1E
06-19-03

U.S. Department
of Transportation
**Federal Transit
Administration**

In addition to the Circular, there is a fully annotated version of the Circular that explains FTA's interpretations of the various provisions of the Circular and is regularly updated to reflect changes in procurement practices. Get this annotated (footnoted) version: [\[HTML\]](#) [\[Word\]](#).

1. **PURPOSE.** This circular sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts. These requirements are based on the common grant rules, Federal statutes, Executive orders and their implementing regulations, and FTA policy.
2. **CANCELLATION.** This circular cancels FTA Circular 4220.1D "Third Party Contracting Requirements," dated 4-15-96.
3. **REFERENCES.**
 - a. Federal Transit Laws, 49 U.S.C. Chapter 53.
 - b. Transportation Equity Act for the 21st Century 1998 (TEA-21), P.L. 105-178 as amended, TEA-21 Restoration Act 1998, P.L. 105-206.
 - c. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively,
 - d. 49 C.F.R. part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - e. 49 C.F.R. part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
 - f. Executive Order 12612, "Federalism," dated 10-26-87.
 - g. FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
 - h. FTA Master Agreement [\[PDF\]](#).

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i. Appendix D, Best Practices Procurement Manual.

4. **APPLICABILITY.** This circular applies to all FTA grantees and subgrantees that contract with outside sources under FTA assistance programs. FTA grant recipients who utilize FTA formula funds for operating assistance are required to follow the requirements of this circular for all operating contracts. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA funds or to those operating and planning contracts awarded by grantees that do not receive FTA operating and planning assistance.

Congestion Mitigation and Air Quality (CMAQ) and Job Access/Reverse Commute (JARC) project funds may be used for operations. Although grantees must follow circular requirements for any specific contracts that utilize CMAQ or JARC funds, the use of CMAQ and JARC funds for operations does not trigger the applicability of the circular to all other operating contracts.

Grantees who utilize formula capital funds for preventive maintenance contracts are subject to the following requirements of the circular: If FTA formula capital funds are fully allocated to discrete preventive maintenance contracts, then the requirements of this circular will apply only to those discrete contracts and must be identified and tracked by the grantee. If the FTA formula funds are not allocated to discrete contracts then all preventive maintenance contracts are subject to the requirements of the circular.

a. **States.** When procuring property and services under a grant, a State will follow the same procurement policies and procedures that it uses for acquisitions that are not paid for with Federal funds. States must, at a minimum, comply with the requirements of paragraphs 7m, 8a and b, and 9e of this circular and ensure that every purchase order and contract executed by it using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations.

b. **All Other Recipients.** Subgrantees of states and all other FTA grantees (to include regional transit authorities) will administer contracts in accordance with this circular.

5. **POLICY.** FTA's role in grantee procurements is reflective of Executive Order 12612, **Federalism**. The executive order directs Federal agencies to refrain from substituting their judgment for that of their recipients unless the matter is primarily a Federal concern and to defer, to the maximum extent feasible, to the States to establish standards rather than setting national standards.

In 1996, FTA reduced its role in grantee third party procurement activity in several important respects. To ensure compliance with Federal procurement requirements, FTA will continue to provide guidance and technical assistance to its grantees consistent with its Federal oversight responsibilities.

a. **Grantee Self-Certification.** Recognizing that most FTA grantees have experience with the third party contracting requirements of the "common grant rules" (49 C.F.R. parts 18 and 19), FTA will rely primarily on grantees' "self-certifications" that their procurement system meets FTA requirements and that a grantee has the technical capacity to comply with Federal procurement requirements. All grantees must "self certify" as part of the Annual Certification/Assurance Process.

FTA will monitor compliance with this circular as part of its routine oversight responsibilities. If FTA becomes aware of circumstances that might invalidate a grantee's self-certification, FTA will investigate and recommend appropriate

measures to correct whatever deficiency may exist.

b. FTA Review of Third Party Contracts. FTA relies on the validity of each grantee's self-certification rather than on a pre-award review of third party contracts. Accordingly, FTA will rely on periodic, post-grant reviews to ensure that grantees comply with Federal requirements and standards. Grantees are still free to request FTA's pre-award review of their procurements as part of FTA's technical assistance program. Conversely, if FTA requests to review the record of a particular procurement, grantees must make their procurement documents available for FTA's pre-award (or post-award) review.

c. Procurement System Reviews. FTA is required by 49 U.S.C. §5307 to perform reviews and evaluations of grant programs and to perform a full review and evaluation of the performance of grantees in carrying out grant programs with specific reference to their compliance with statutory and administrative requirements. Accordingly, FTA will perform procurement system reviews as part of its on-going oversight responsibility. FTA may recommend "best practices" in order to assist the grantee in improving its procurement practices. In such cases, FTA will identify such recommendations as "advisory."

d. FTA Procurement Technical Assistance. FTA provides procurement training and technical assistance at both regional and national levels by offering various instructional courses, by conducting regional technical assistance conferences, by providing assistance by a contractor on an as-needed basis, and by updating and revising the FTA "Best Practices Procurement Manual." The manual contains procurement guidance and "best practices" that grantees may choose to follow in performing their procurement functions.

e. Contract Clauses and Provisions. The Master Agreement, issued annually, lists many but not all FTA and other crosscutting Federal requirements applicable to FTA grantees. Many of these requirements are related to grantee procurements. Further guidance and suggested wording for contract clauses and provisions is provided in the "Best Practices Procurement Manual."

f. Use of GSA Schedules is restricted to those transit properties with specific legislative authority to use them.

6. DEFINITIONS. All definitions in 49 U.S.C. §5302 are applicable to this circular. The following definitions are provided:

a. "Grantee" means the public or private entity to which a grant or cooperative agreement is awarded by FTA. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.

For the purposes of this circular, "grantee" also includes any subgrantee of the grantee. Furthermore, a grantee is responsible for assuring that its subgrantees comply with the requirements and standards of this circular, and that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

b. "State" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. "State" does not include any public and Indian housing agency under the United States Housing Act of 1937.

c. "FTA" refers to the Federal Transit Administration.

d. "Third party contract" refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA.

e. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.

f. "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.

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

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

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

7. GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS.

a. Conformance with State and Local Law. Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular. If there is no State law on a particular aspect of procurement, then Federal contract law principles will apply.

b. Contract Administration System. Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

c. Written Standards of Conduct. Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

(1) The employee, officer, agent, or Board member,

(2) Any member of his/her immediate family,

(3) His or her partner, or

(4) An organization that employs, or is about to employ, any of the above.

The grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

d. Ensuring Most Efficient and Economic Purchase. Grantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

e. Intergovernmental Procurement Agreements.

(1) 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.

(2) Grantees are also encouraged to jointly procure goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

(3) Grantees may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as 'piggybacking') may exercise them after first determining the contract price remains fair and reasonable.

f. Use of Excess Or Surplus Federal Property. Grantees are 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.

g. Use of Value Engineering in Construction Contracts. Grantees are encouraged to use value engineering clauses in contracts for construction projects. FTA cannot approve a New Starts grant application for final design funding or a full funding grant agreement until value engineering is complete (see FTA Circular 5010.1C).

h. Awards to Responsible Contractors. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

i. Written Record of Procurement History. Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

- (1) the rationale for the method of procurement,
- (2) selection of contract type,
- (3) reasons for contractor selection or rejection, and
- (4) the basis for the contract price.

j. Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

k. Responsibility for Settlement of Contract Issues/Disputes. Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.

FTA will not substitute its judgment for that of the grantee or subgrantee, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

l. Written Protest Procedures. Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to FTA. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

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

m. Contract Term Limitation. Grantees shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etcetera) should be based on sound business judgment. Grantees are expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness

and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification

n. Revenue Contracts. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.

o. Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others as defined in paragraph 6f.

p. Piggybacking. 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.

q. E-Commerce. E-Commerce is an allowable means to conduct procurements. If a grantee chooses to utilize E-Commerce, written procedures need to be developed and in place prior to solicitation and all requirements for full and open competition must be met in accordance with this circular.

8. COMPETITION.

a. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its' salient characteristics.

Grantees may define the salient characteristics in language similar to the following:

- (a) 'Original Equipment Manufacturer (OEM) part #123 or approved equal that

complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or

(b) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other component the part must be compatible with] and will not compromise any OEM warranties'; and

(c) Any arbitrary action in the procurement process.

b. Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

c. Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:

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

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. 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 a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

d. Prequalification Criteria. Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

9. METHODS OF PROCUREMENT. The following methods of procurement may be used as appropriate:

a. Procurement by Micro-Purchases. Micro-purchases are those purchases under \$2,500. Purchases below that threshold may be made without obtaining competitive

quotations. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500. Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived. The other requirements of paragraph 7(i) do not apply to micro-purchases.

b. Procurement by Small Purchase Procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

c. Procurement By Sealed Bids/Invitation For Bid (IFB). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (a) A complete, adequate, and realistic specification or purchase description is available;
- (b) Two or more responsible bidders are willing and able to compete effectively for the business;
- (c) 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; and
- (d) No discussion with bidders is needed.

(2) If this procurement method is used, the following requirements apply:

- (a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
- (b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
- (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- (e) Any or all bids may be rejected if there is a sound documented business reason.

(3) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph 9c(1) above apply.

d. Procurement By Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

(1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;

(2) Proposals will be solicited from an adequate number of qualified sources;

(3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered; and

(5) In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency 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 Section 6, Definitions. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a "best value" basis.

e. Procurement Of Architectural and Engineering Services (A&E). Grantees shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Qualifications-based competitive proposal procedures require that:

(1) An offeror's qualifications be evaluated;

(2) Price be excluded as an evaluation factor;

(3) Negotiations be conducted with only the most qualified offeror; and

(4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

These qualifications-based competitive proposal procedures can only be used for the procurement of the services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the grantee's State adopts or has

adopted by statute a formal procedure for the procurement of these services.

f. Procurement of Design-Bid-Build. Grantees may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Circular relative to the method of procurement used and all other applicable federal requirements.

g. Procurement of Design-Build. Grantees must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section 9e when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in Section 9e, Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in Section 9e, unless required by State law.

h. Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

(a) The item is available only from a single source;

(b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(c) FTA authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;

(d) After solicitation of a number of sources, competition is determined inadequate; or

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307 (a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

1 that such manufacturer or supplier is the only source for such item; and

2 that the price of such item is no higher than the price paid for such item by like customers.

(2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

i. Options. Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:

(1) Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

(2) Exercise of Options.

(a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

(b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

10. CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT

ACTION. Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

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

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

b. Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

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

d. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with applicable Federal cost principles.

e. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

11. BONDING REQUIREMENTS. For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that

grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;

b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and

c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

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

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

(3) Two and a half million dollars if the contract price is more than \$5 million.

d. A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria.

12. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS.

a. Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

b. Progress Payments. Grantees may use progress payments provided the following requirements are followed:

(1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.

(2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

13. LIQUIDATED DAMAGES PROVISIONS. A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved

unless the FTA permits otherwise.

14. CONTRACT AWARD ANNOUNCEMENT. If a grantee announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, the grantee shall:

- a. Specify the amount of Federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and
- b. Express the said amount as a percentage of the total costs of the planned acquisition.

15. CONTRACT PROVISIONS. All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
- b. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

16. STATUTORY AND REGULATORY REQUIREMENTS. A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R.

Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual.

For specific guidance concerning the crosscutting requirements of other Federal agencies, grantees are advised to contact those agencies.

Sincerely,

Jennifer L. Dorn
Administrator

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