

Lee-Russell Council of Governments

# **PROCUREMENT PROCEDURES**

FEDERAL TRANSIT ADMINISTRATION PROGRAMS

**Transit Director**

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## **ACCESSIBLE FORMATS**

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# Procurement Procedures

## I. INTRODUCTION

The Governor has designated the Alabama Department of Transportation (ALDOT) as the administrator of all FTA programs affecting rural and small urban areas. ALDOT's Transportation Planning and Modal Programs Bureau, Transit Section, has primary responsibility for developing and implementing public transportation programs throughout the State. ALDOT's FTA funds are passed through to subrecipients (agencies) who provide transit services.

ALDOT's Transit Section has developed *Procurement Procedures* available on the Transit Section website at: <https://www.dot.state.al.us/tmpweb/mp/transit.html>. ALDOT's role in the Lee-Russell Council of Governments procurement process is to ensure that the Lee-Russell Council of Governments procurement actions are internally-supported by the Lee-Russell Council of Governments written procedures and that they are in full compliance with state and federal laws.

The Lee-Russell Council of Governments oversees procurement procedures for federal and state public transportation grant funds. This includes equipment, real property, and other goods and services.

## II. AUTHORIZATION

### A. Federal Authority

- \* Procurement standards must meet or exceed the requirements of the Uniform Guidance "Super Circular" published by the Office of Management and Budget at 2 CFR Part 200. DOT incorporated these changes at 2 CFR part 1201, which deviates from part 200 only with respect to standard application requirements, equipment, procurements by States, and financial reporting.
- \* The requirements for the pre-award and post-delivery audits of vehicles are contained in 49 CFR Part 663. The requirements for the (Altoona) testing of bus models are contained in 49 CFR Part 665.
- \* The requirements for the Disadvantaged Business Enterprises (DBE) program as defined by the U.S. Department of Transportation (U.S. DOT) are located at 49 CFR Part 26.

- \* 49 CFR Part 28 relates to nondiscrimination on the basis of handicap in U.S. DOT programs and focuses on facilities. Requirements for transportation services for persons with disabilities are contained in 49 CFR Part 37.
- \* All vehicles shall comply with the vehicle accessibility guidelines contained in 36 CFR Part 1192 (the Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles).
- \* Procedures for procuring architectural and engineering services are found in 40 USC Chapter 10, Subchapter VI.

## **B. State Authority**

- \* For a description of ALDOT's policies regarding standard federal requirements, refer to the *State Management Plan*.
- \* For a description of ALDOT's rules regarding contracting and procurement requirements specific to public transit projects, refer to the project agreement and to the ALDOT Transit Section *Procurement Procedures* available on the Transit Section website at: <https://www.dot.state.al.us/tpmpweb/mp/transit.html>.
- \* The department's Disadvantaged Business Enterprise program describes the DBE goal, goal setting methodology, and complaint procedures.

## **C. Lee-Russell Council of Governments' Authority**

- \* Lee-Russell Council of Governments is an ALDOT subrecipient for Transit funds. Lee-Russell Council of Governments is therefore required to have processes in place to ensure procurement activities follow all applicable laws and regulations and promote free and open competition.
- \* The Lee-Russell Council of Governments' Governing Board must adopt and follow procurement standards, policies, and procedures.

## **D. Federal Transit Administration Guidance**

- \* Federal Transit Administration (FTA) guidance for using third party contracts is found in **Circular 4220.1 (series)**.
- \* Guidelines and management procedures for capital purchases are covered in **FTA Circular 5010.1 (series)**. This document provides guidance on real property, equipment, supplies, and rolling stock. Local Match is also described in this Circular.

- \* Individual program circulars have a section on procurement. A complete listing of FTA circulars is available on-line at FTA's web site: <https://www.transit.dot.gov/>.
- \* The FTA *Best Practices Procurement & Lessons Learned Manual* released October 2016 provides suggestions and sample documents covering every phase of procurement. It is located at: <https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>.
- \* The FAQ Procurement page on FTA's website provides questions and answers of general interest. It is located at: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs>.

### III. ADMINISTRATIVE STANDARDS

#### A. Introduction

ALDOT and its subrecipients must adopt and use their own procurement procedures (that reflect applicable Federal, State, and local laws and regulations). ALDOT must have written Procurement Procedures as a condition of self-certification. ALDOT's subrecipients are also required to have written Procurement Procedures.

ALDOT's Procurement Procedures must be sufficient to ensure that all the information FTA requires for project administration is entered into the FTA's Transit Award Management System (TrAMS), so that it is readily available to FTA as needed. ALDOT may request subrecipient information from time to time in order to update the project information in TrAMS.

ALDOT and its subrecipients must establish adequate written Procurement Procedures before any solicitation takes place. The procurements must conform to applicable Federal law, including the requirements and standards identified in **Circular 4220.1 (series)**.

The subrecipient procurement standards, policies and procedures must be adopted by the subrecipient's governing board.

Transit agencies are required to have processes in place to ensure procurement activities promote free and open competition.

#### B. Adoption of Procurement Procedures

- \* The Lee-Russell Council of Governments' Governing Board adopted or revised procurement standards, procedures, and policies on April 11, 2017. (*Refer to Section X on page 2.*)

## C. Standards

Standards shall include but are not limited to:

- \* Procurement procedures that reflect applicable federal, state and local laws and regulations
- \* Contract administration that ensures contractor performance in accordance with terms, conditions, and specifications of the contracts or purchase orders
- \* Written code of standards of conduct
- \* Review procedures that avoid purchase of unnecessary or duplicative items
- \* Written procurement selection procedures
- \* Use of intergovernmental agreements, federal excess and surplus property, and value engineering wherever possible
- \* Cost or price analysis for procurement actions
- \* Written procurement history record
- \* Written procedures to handle and resolve protests
- \* Rolling stock/replacement parts procurements that do not exceed five (5) years inclusive of options

## D. Important Considerations

**Advance Payments Prohibited:** Advance payments are payments made to a contractor by ALDOT or its subrecipient before the contractor incurs contract costs. Lee-Russell Council of Governments acknowledges that it cannot make advance payments because both FTA and ALDOT prohibit such.

**Award to Responsible Contractors:** Lee-Russell Council of Governments acknowledges that it can make FTA-assisted contract awards only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the proposed procurement. Responsibility is a procurement issue that is determined after receiving bids or proposals and before making contract award. The prospective contractor will demonstrate affirmatively that it qualifies as “responsible” under the standards of 49 USC Section 5325(j), and that its proposed subcontractors (if any) also qualify as “responsible.”



Responsibility may be affected by new information up to the time of contract award. Responsibility determination factors include whether the prospective contractor has:

- \* Appropriate financial, material, equipment, facility and personnel resources and expertise (or the ability to obtain them) necessary to indicate its capability to meet all contractual requirements
- \* Capability to comply with the required delivery schedule considering all their existing business commitments
- \* Satisfactory record of performance
- \* Satisfactory record of integrity and business ethics
- \* Legally qualified to contract with ALDOT or its subrecipients
- \* Supplied all necessary information in connection with the inquiry concerning responsibility

**Buy America:** As described in the *State Management Plan*, ALDOT orders all new vehicles for its subrecipients. The subrecipients are not allowed to purchase new vehicles directly with Sections 5310, 5311, and 5339 funds unless approved by ALDOT. If ALDOT approves Lee-Russell Council of Governments to purchase a new vehicle or vehicles, Lee-Russell Council of Governments acknowledges that it must ensure that pre-award audit and post-delivery audit are conducted in accordance with the FTA's Buy America regulations at: <https://www.transit.dot.gov/>.

Lee-Russell Council of Governments acknowledges that Buy America also applies to third party construction contracts exceeding the Federal Simplified Acquisition Threshold (currently \$150,000 as set by 2 CFR Part 200). FTA advised in **Circular 4220.1 (series)** that its Buy America regulations are complex; therefore, ALDOT or its subrecipient may need to request Buy America guidance from FTA before proceeding with construction work.

**Clear, Accurate, and Complete Specifications:** Lee-Russell Council of Governments acknowledges that it must provide a clear, accurate, and complete description of the technical requirements for the material, product, or service to be procured. Complete and accurate specifications are required to ensure that all potential bidders are given equal knowledge of the requirements.

**Conflicts of Interest:** When using outside sources for various procurement tasks, Lee-Russell Council of Governments must take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

***Analysis of Acquisitions to Identify, Evaluate, and Mitigate Potential Organizational Conflicts of Interest:***

Lee-Russell Council of Governments shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible. Lee-Russell Council of Governments will avoid, neutralize, or mitigate potential conflicts before contract award. Lee-Russell Council of Governments acknowledges that an organizational conflict of interest occurs when any of the following circumstances arise:

- \* When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the Lee-Russell Council of Governments due to other activities, relationships, contracts, or circumstances.
- \* The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- \* During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

***Employee Standards of Conduct:*** Lee-Russell Council of Governments is required to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts supported by Federal funds. Lee-Russell Council of Governments adopted these written standards of conduct on April 11, 2017 Resolution Number for the Agency].

Lee-Russell Council of Governments' employees are also subject to the requirements of the Alabama Ethics Commission.

The employee standards of conduct address the following:

- \* Preclude any Lee-Russell Council of Governments' 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 from participating in the election, award, or administration of a contract supported with FTA assistance
- \* State that the Lee-Russell Council of Governments' officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value [above nominal intrinsic value] from contractors, potential contractors, or parties to sub-agreements
- \* Provide for penalties, sanctions, or other disciplinary action for violation of such standards by the Lee-Russell Council of Governments' officers, employees, agents, board members, or by contractors to the extent permitted by state or local law or regulations

- ✱ If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local, government, or Indian tribe, verify the written standards of conduct cover organizational conflicts of interest

***Cost Plus a Percentage of Cost and Percentage of Construction Cost Contracts Prohibited:***

Federal law prohibits the use of cost plus a percentage of cost (CPPC) and percentage of construction cost methods of contracting.

***Disputes/Breach Clause:*** All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for appropriate sanctions and penalties. The Violations and Breach of Contracts clause flows down to all third party contractors and their contracts at every tier. Lee-Russell Council of Governments acknowledges that it must notify both ALDOT and FTA of any disputes involving third party contracts with a value in excess of the Simplified Acquisition Threshold (currently set at \$150,000) providing such details as FTA may require. FTA encourages alternative dispute resolution procedures where appropriate.

***Environmental and Energy Efficiency Preference:*** Lee-Russell Council of Governments acknowledges that it is required by FTA to have written procurement procedures that have a preference in procurement, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient. Therefore, ALDOT and its subrecipients will consider environmental sustainability and energy efficiency when developing specifications for rolling stock and construction. Lee-Russell Council of Governments acknowledges that it is also encouraged to have recycling programs for cardboard, mixed office paper, and other materials as appropriate.

***Exercise of Options:*** An option is a unilateral right in a contract by which, for a specified time, the purchaser may acquire additional equipment, supplies, or services. Lee-Russell Council of Governments acknowledges that it may include contract options to ensure the future availability of property or services, so long as Lee-Russell Council of Governments can justify the option(s) as needed for its public transportation or project purposes. An option may also extend the term of the contract. In accordance with FTA guidance, an option cannot be exercised unless it is determined that the option price is better than prices available at the time the option is exercised.

**Federal Cost Principles:** Lee-Russell Council of Governments acknowledges that project costs must conform to applicable Federal cost principles [set forth in the Federal Acquisition Regulation (FAR), 48 CFR part 31] for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, and either authorized or not prohibited by Federal law or regulation. Change order costs must also comply with Federal cost principles.

**Federal Simplified Acquisition Threshold:** The Super Circular (2 CFR Part 200) increases the simplified acquisition threshold to \$150,000 (per 2 CFR 200.88) to bring it into alignment with the Federal Acquisition Regulation (FAR). This new threshold applies to procurements funded by grants issued on or after December 26, 2014. Procurements funded by grants issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 49 CFR 18.36(d)). The \$150,000 threshold will be adjusted periodically for inflation. FTA will continue to base the exemption on the total amount of the project and not on the individual price of items being purchased.

**Geographical Preferences:** Lee-Russell Council of Governments is prohibited from specifying in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. However, there are several exceptions, as follows:

- \* **A&E Services:** Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Their use must not restrict competition (i.e., the use of geographic preference leaves only one or two qualified firms to bid on the contract).
- \* **Licensing:** Alabama can enforce its licensing requirements, provided that these requirements do not conflict with Federal law.

**Out of Scope Changes Are Considered Sole Source:** An “out of scope” or “beyond scope” change is defined as a contract change that is not within the scope of the original contract. This type of change is considered a sole source procurement. Therefore, Lee-Russell Council of Governments acknowledges that it must justify why an amendment was the only feasible course of action, and must comply with FTA requirements for cost analysis and profit negotiation. **Section V.E.** of this document provides additional information on Sole Source procurement.

**“Piggy-backing”:** Lee-Russell Council of Governments acknowledges that ALDOT does not allow it or any other ALDOT subrecipient to “piggyback” on procurement contracts for other states. ALDOT will not allow piggybacking on contract awards made under Sections 5307, 5310, 5311, or 5339.

***Prequalification in Real Property and Other Solicitations:*** Lee-Russell Council of Governments acknowledges that it may prequalify people, firms, or products for participation in procurements provided that:

- \* Lists of prequalified persons, firms, or products that are used in acquiring property and goods and services are current
- \* Lists include enough qualified sources to ensure maximum full and open competition
- \* Potential bidders or proposers are allowed to qualify during the solicitation period (from the issuance of the solicitation to its closing date)

***Procedures for Ensuring the Most Efficient and Economic Purchase (Including Lease versus Purchase Analysis):*** Lee-Russell Council of Governments acknowledges that it must review proposed procurements to avoid purchase of unnecessary or duplicative items. Ensuring an economic purchase could include breaking out or combining purchases, or using annual contracts and performing a lease versus buy analysis to ensure the most economical approach.

***Progress Payments Prohibited by ALDOT:*** FTA might allow ALDOT or its subrecipients to make progress payments under certain carefully documented circumstances. Lee-Russell Council of Governments acknowledges that ALDOT does not allow it or any other subrecipient to make progress payments.

***Signature Authority:*** Lee-Russell Council of Governments will designate in its Authorizing Resolution the title of the position that will have signature authority for FTA grants.

***Sound and Complete Agreement:*** Lee-Russell Council of Governments must ensure that all third party contracts include provisions to define a sound and complete agreement. All third party contracts will include proper specifications that allow for administrative, contractual, termination, and legal remedies. Lee-Russell Council of Governments reserves the right to seek clarification and request additional information from any bidder or offeror before making an award.

***State or Local Government Purchasing Schedules or Purchasing Contracts:*** FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration’s (GSA) Cooperative Purchasing Program available for Federal Government use. If the State or local government wishes to permit others to use its schedules, the State or local government can seek the agreement of the vendor to provide the listed property or services to others with access to the

schedules, or it may permit the vendor to determine whether or not it wishes to do so. CAUTION: The term "State or local government purchasing schedule" does not include intergovernmental purchasing schedules.

If obtaining property or services in this manner, Lee-Russell Council of Governments must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, either in the master intergovernmental contract or in the purchase document of the Lee-Russell Council of Governments. One way of achieving compliance with FTA requirements is for all parties to agree to append the required Federal clauses in the purchase order or other document that effects the subrecipient's procurement. When buying from these schedules, Lee-Russell Council of Governments should obtain Buy America certification before entering into the purchase order. If the product to be purchased is Buy America compliant, there is no problem. If the product is not Buy America compliant, an FTA waiver will be required before proceeding.

***Tag-Ons (Cardinal Changes) Prohibited by FTA / "In-Scope" Changes Allowed:*** Lee-Russell Council of Governments acknowledges that a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as "tag-ons." Cardinal changes ("tag-ons") are prohibited by FTA. A change within the scope of the contract (sometimes referred to as an "in-scope" change) is not a "tag-on" or cardinal change.

***Termination Clause:*** Lee-Russell Council of Governments acknowledges that termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000. The Termination clause flows down to all third party contractors and their contracts at every tier. Termination may be for convenience or for default (breach or cause). This clause will describe the manner of effecting the termination and the basis for settlement.

***Time Limit for Contracts Other Than Rolling Stock:*** In procurements that do not involve rolling stock, Lee-Russell Council of Governments will follow the FTA requirement to exercise "sound business judgment," and "to establish contract terms no longer than necessary to accomplish the purpose of the contract."

***Time and Materials Contracts Are Restricted:*** Lee-Russell Council of Governments acknowledges that it is permitted to use time and materials contracts only: (1) after determining that no other type of contract is suitable; and (2) if the contract specifies a ceiling price that the contractor will not exceed except at its own risk. FTA considers this type of contract to be the least preferable

of all allowable contract types because it creates a disincentive for the contractor to complete the contract in a timely manner.

**Veterans Preference / Employment:** Lee-Russell Council of Governments shall ensure that contractors working on an FTA-funded capital project 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 hiring preference 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.

## IV. SPECIAL CONSIDERATIONS

### A. Real Property

Special requirements pertain to the purchase of real property. **FTA Circular 5010.1 (series)** covers the acquisition of real property. (Note: Where ALDOT is the designated recipient of funds—as in the Section 5311 Formula Grants for Rural Areas Program—all direct contact with FTA flows through the ALDOT Transit Section). Chapter 12 of the *State Management Plan*, “Construction or Renovation of Facilities” provides details on ALDOT policies.

**Pre-Award Review:** At no time will Lee-Russell Council of Governments fund the acquisition of land for transit facilities not provided for under the scope of an approved grant. All construction or real property acquisition-related activities **over \$10,000 shall require pre-award review and approval** by ALDOT before commencing work.

**Prerequisites for Project Funding:** Lee-Russell Council of Governments will prepare the following documents for ALDOT to submit to the Federal Transit Administration (FTA) Region IV office for review and concurrence prior to funding commitment:

- \* Site selection analysis
- \* Environmental Assessment as required by NEPA
- \* Appraisal of property
- \* Cost Analysis

**Site Selection Analysis:** An environmental review is required for new construction or renovation of a building that is purchased. All proposed project sites must be evaluated and assessed to determine impact, if any, on wetlands, streams, high biotic potential, livable communities’ considerations, and federally protected threatened or endangered species and their habitats. A

consulting firm may be used to determine if there are any environmental issues that need to be addressed prior to construction.

**Environmental Factors:** There are also environmental factors involved in the procurement of land or facilities. FTA must accept the documentation in support of a categorical exclusion, environmental assessment, or environmental impact statement before property can be purchased.

Lee-Russell Council of Governments acknowledges that an environmental review must be completed, and FTA's approval received, prior to committing federal funds. Federal funds will not be made available for any facility purchase or construction until the environmental documents are reviewed and approved by FTA.

Environmental issues may need to be addressed if any of the following exist:

- ✱ Property is owned by the state or property is located on a national historic site
- ✱ Pre-existing environmental issues are present, e.g. if underground tanks and/or wetlands are present

If the property has already been purchased by Lee-Russell Council of Governments and an environmental review or study has been completed, these document(s) must be submitted to ALDOT for review and subsequent federal approval.

Lee-Russell Council of Governments has been advised that ALDOT's review of environmental documentation may take 4 - 6 weeks depending on the complexity of the project. A copy of the survey or plot map and description of the property shall be furnished to ALDOT for review. Additional information such as a feasibility study, appraisals, site plan and other relevant information are needed to assist ALDOT with the review.

**Appraisals:** Lee-Russell Council of Governments acknowledges that to establish the value of the property, the Federal Transit Administration requires one appraisal and a review appraisal. FTA's prior approval is required when the Lee-Russell Council of Governments' recommended offer of just compensation exceeds \$250,000, or when a property appraised at \$250,000 or more must be condemned. This process must be followed to purchase real property using FTA funds. For guidance on using property as local match, see **FTA Circular 5010.1 (series)**.

**Purchase and Titling:** Lee-Russell Council of Governments, not its contractor, must be the recorded owner of real property purchased with funds provided by the Alabama Department of Transportation.

The services of a titling company ensure that the Lee-Russell Council of Governments is receiving a good title when it buys real property. Using a titling company also ensures that ALDOT has a



valid lien against the property. The latter occurs when the Lee-Russell Council of Governments signs a deed of trust in favor of the Alabama Department of Transportation.

The ALDOT Transit Section and ALDOT Procurement Office will provide technical assistance for all real estate transactions.

## **B. Procurement of Architectural and Engineering Services**

Lee-Russell Council of Governments acknowledges that a qualifications-based, competitive proposal procedure (i.e., Brooks Act procedures) must be used when procuring architectural and engineering (A&E) services. Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that lead to construction.

Prior to selecting an architect or engineer, a "Request for Qualifications" shall be advertised in a publication with national circulation. Alternatively, Lee-Russell Council of Governments could compile a central bidders list from discussions with other agencies that have awarded contracts for similar work.

Upon receipt of various statements of qualifications, the prospective bidders are ranked and price negotiations may begin with the top ranked candidate.

***Price is Not an Evaluation Factor for Architectural and Engineering (A&E) Services and Other Services That Lead to Construction:*** In qualifications-based procurement procedures, an offeror's qualifications must be evaluated and price must be excluded as an evaluation factor.

***Serial Price Negotiations for A&E and Other Services That Lead to Construction (Qualifications-Based Procurement Procedures):*** Negotiations are first conducted with only the most qualified offeror. Only after failing to agree on a fair and reasonable price with the most qualified offeror, may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price Lee-Russell Council of Governments believes is fair and reasonable.

The FTA *Best Practices Procurement & Lessons Learned Manual* released October 2016 (Chapter 3.4.9) provides excellent and detailed information about retaining A&E firms.

***On-Call Contracts:*** A&E services must be procured using a qualifications-based process in accordance with the Brooks Act. However, Lee-Russell Council of Governments may use on-call contracts for smaller jobs that would be too expensive (administratively) to compete individually. Lee-Russell Council of Governments acknowledges that solicitations for on-call awards must describe how the work will actually be assigned, and not leave the process undefined. Lee-Russell

Council of Governments also acknowledges that there shall be a finite period for these contract awards, after which a new round of qualifications-based awards will be made.

ALDOT's Transit Section and Procurement Office can augment local expertise in this area.

## C. Construction

This subheading includes:

- \* Pre-construction meetings
- \* Facility accessibility
- \* Bid Guarantee (Construction over \$150,000)
- \* Performance Bond (Construction over \$150,000)
- \* Payment Bond (Construction over \$150,000)
- \* Liquidated Damages
- \* Design-Bid-Build
- \* Design-Build

***Pre-Construction Meeting:*** A pre-construction meeting must be held between Lee-Russell Council of Governments, the construction company, and the architect or overseer of the construction phase. Knowledgeable ALDOT regional staff shall also attend. The agenda for the meeting shall include:

- \* Construction milestones
- \* Billing processes
- \* Contingencies

***Transportation Facility Accessibility (Public Agencies):*** Lee-Russell Council of Governments - CARTS acknowledges that public entities constructing new facilities or altering existing facilities to be used for the provision of public transportation service must make the facility or alterations readily accessible to and useable by individuals with disabilities. The facility accessibility regulations are contained in (49 CFR Part 37). Appendix D to Part 37.215 contains an explanation of the regulations.

***Bid Guarantee (Construction over \$250,000):*** Lee-Russell Council of Governments acknowledges that bid guarantees are required for all construction contracts exceeding the Simplified Acquisition Threshold, currently set at \$250,000, unless FTA determines that other

arrangements adequately protect the Federal interest. Each bidder is generally required to provide a bid guarantee equivalent to 5 percent of its bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

**Performance Bond (Construction over \$250,000):** Lee-Russell Council of Governments acknowledges that bonds are required for all construction contracts exceeding the Simplified Acquisition Threshold, currently set at \$250,000, unless FTA determines that other arrangements adequately protect the Federal interest. Contractors generally must obtain a performance bond for 100 percent of the contract price. A performance bond is obtained to ensure completion of the obligations under the third party contract.

**Payment Bond (Construction over \$250,000):** Lee-Russell Council of Governments acknowledges that bonds are required for all construction contracts exceeding the Simplified Acquisition Threshold, currently set at \$250,000, unless FTA determines that other arrangements adequately protect the Federal interest. Contractors generally must obtain a standard payment bond. A payment bond is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

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

**Liquidated Damages:** Lee-Russell Council of Governments acknowledges that Lee-Russell Council of Governments (with ALDOT contract pre-approval) 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. In addition, the assessment for damages shall be at a specific rate per day for each day of the overrun in contract time. The rate must be pre-determined and specified in the third party contract. FTA and ALDOT expect Lee-Russell Council of Governments to credit any liquidated damages recovered to the project, unless FTA and ALDOT permit another use of the liquidated damages.

**Design-Bid-Build:** In this contract method, Lee-Russell Council of Governments, subject to ALDOT pre-approval, commissions an architect or engineer to prepare drawings and specifications under

a design services contract, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project. The design-bid-build procurement method requires separate contracts for design services and for construction.

**Design Services.** For design services, Lee-Russell Council of Governments must use qualifications-based procurement procedures, in compliance with applicable Federal, State, and local law and regulations.

**Construction.** Because Lee-Russell Council of Governments may not use qualifications-based procurement procedures for the actual construction, alteration, or repair of real property, Lee-Russell Council of Governments acknowledges that it must generally must use competitive procedures for the construction work. Competitive procedures may include sealed bidding or competitive negotiation procurement methods.

***Design-Build:*** In this contract method, Lee-Russell Council of Governments, subject to ALDOT pre-approval, contracts for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction. The procurement method is determined by estimated value of the various contract activities to be undertaken. Typically, competitive negotiations or sealed bids are used for the entire procurement because the construction costs usually have the greater cost.

## **D. Subcontracts**

Before awarding a third party contract of **\$15,000 or more**, Lee-Russell Council of Governments must allow ALDOT to review and approve the contract documents. The Alabama State Bid Law applies where the value is **\$15,000 or more**. Quotes are used for a value of less than \$15,000.

***Contracts of \$15,000 or More:*** Lee-Russell Council of Governments develops the solicitation. ALDOT's Transit Section does a pre-review of the solicitation. After ALDOT concurrence with the solicitation, Lee-Russell Council of Governments proceeds with the bidding process. Lee-Russell Council of Governments checks the responses received and determines the "lowest responsive" bidder. The bids are then sent to ALDOT for concurrence with the Lee-Russell Council of Governments selection. After concurrence, Lee-Russell Council of Governments may proceed with developing a contract Agreement. ALDOT reviews the Agreement between the Lee-Russell Council of Governments and the contractor to ensure that all required clauses and provisions are included. ALDOT exercises the right of Final Approval.

These contracts shall contain all provisions required by state and federal law. Requirements flow down to all third party contractors and their contracts at every tier. All relevant clauses contained

in **FTA Circular 4220.1 (series)** and the current Master Agreement shall be copied into **Lee-Russell Council of Governments'** contracts.

**Lee-Russell Council of Governments** will monitor the successful contractor for compliance with these requirements. Additionally, the solicitation document and resulting contract shall include "performance measures" by which **Lee-Russell Council of Governments** can judge the contractor's fulfillment of the contract requirements. Non-performance penalties/remedies are another topic to consider.

**Lee-Russell Council of Governments** may include clauses for renewal. Sound business practice dictates that before exercising such options, **Lee-Russell Council of Governments** shall consider the contractor's performance and if the terms, conditions, and price are still favorable to **Lee-Russell Council of Governments**.

## **V. METHODS OF PROCUREMENT**

### **A. Micro-Purchases (\$10,000 or less)**

Although micro-purchases may be made without obtaining competitive quotations in instances in which the price paid is determined to be fair and reasonable, ALDOT requires price quotes for all purchases of **\$10,000 or less**. Therefore, Lee-Russell Council of Governments must describe in writing how it determined that the price was fair and reasonable. Example ways to determine reasonable price are the following: recent subrecipient purchases, prices published by vendors in catalogues, and prices offered by local stores. Every effort is made to ensure full and open competition and to avoid restricting competition in federally supported procurement transactions. Lee-Russell Council of Governments acknowledges that it cannot divide or reduce the size of its procurement merely to come within the micro-purchase limit and thereby limit competition.

Micro-purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements will apply for construction contracts **exceeding \$2,000 but less than \$10,001**.

### **B. Small Purchases (more than \$10,000 and less than \$250,000)**

**Price or Rate Quotations:** **Lee-Russell Council of Governments** acknowledges that small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). ALDOT reviews all solicitation documents to insure that procurements exceeding micro-purchase thresholds are properly federalized. Prior ALDOT approval is required for all procurements exceeding micro-purchase thresholds. The solicitations and quotations may be either oral or written and must be documented.

Please note that the increase in simplified acquisitions threshold does NOT increase the statutorily set small purchase waiver for Buy America. Under 49 USC5323(j) (13):

“(13) Definition of small purchase. – For Purposes of determining whether a purchase qualifies for a general public interest waiver under paragraph (2) (A) of this subsection, including under any regulation promulgated under that paragraph, the term “small purchase” means a purchase of not more than \$250,000.”

### **C. Sealed Bids/Invitation for Bid (IFB)**

Sealed Bids are a generally accepted procurement method where bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price. Sealed Bids are appropriate for acquiring property, construction, and other services. Sealed bid procurements should be used when a complete, adequate, precise, and realistic specification or purchase description is available, and two (2) or more responsible bidders are willing and able to compete effectively for the business.

Bids are publicly solicited and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder. Lee-Russell Council of Governments’ bid threshold has been established by State Law at **\$15,000**. Lee-Russell Council of Governments requires a formal solicitation for all procurements meeting and exceeding the Alabama Bid Law’s threshold.

**Advertising / Soliciting Bids from an Adequate Number of Sources:** Lee-Russell Council of Governments acknowledges that the invitation for bids must be publicly advertised and bids must be solicited from an adequate number of known suppliers (qualified sources), providing them sufficient time to prepare bids prior to the date set for opening the bids. Each solicitation must be advertised at a minimum three (3) consecutive times.

**Sufficient Time Allowed to Prepare Bid:** Lee-Russell Council of Governments acknowledges that it must ensure that potential bidders are allowed sufficient time to prepare bids prior to the date set for opening the bids.

**Bid Opening:** All bids must be publicly opened at the time and place prescribed in the invitation for bids. Bids will remain sealed until bid opening to ensure fairness in the competitive process.

**Firm Fixed Price and Selection on Price:** Bidders will provide a firm fixed price which will be stated in the contract; Lee-Russell Council of Governments acknowledges that the selection of the successful bidder will be made principally on the basis of price.

**Discussions Unnecessary:** Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone. However, a pre-bid conference with prospective bidders before bids have been received can be useful.

**Rejecting Bids:** Lee-Russell Council of Governments acknowledges that any or all bids may be rejected if there is a sound documented business reason. Reasons for possible bid rejection include lack of responsiveness to the solicitation and lack of responsibility of the bidder.

## **D. Competitive Proposals/Request for Proposals (RFP)**

Competitive Proposals/RFPs are publicly solicited from an adequate number of sources and the award is made to the firm whose offer is most advantageous, with price and other factors considered. Evaluation factors are identified and the relative importance that each has towards the award is clearly indicated. Separate discussions with individual proposer(s) are expected to be necessary after proposals are submitted.

**Advertising / Soliciting Proposals from an Adequate Number of Sources:** Lee-Russell Council of Governments acknowledges that the request for proposals must be publicly advertised and proposals must be solicited from an adequate number of known suppliers (qualified sources), providing them sufficient time to prepare proposals prior to the date set for opening the proposals. Each solicitation must be advertised at a minimum three (3) consecutive times.

## **E. Sole Source**

Sole source procurement is not permissible unless there is only a single supplier or extenuating circumstances. The following are examples of circumstances which could necessitate sole source procurement:

- \* Where the compatibility of equipment, accessories, or parts is the paramount consideration
- \* Where a sole supplier's item is needed for trial use or testing
- \* Upgrade to proprietary software or hardware
- \* Where the item is one of a kind

Regardless of the justification for proceeding with a sole source contract, Lee-Russell Council of Governments acknowledges that it is required to obtain a proposal from the contractor and perform the requisite cost analysis to ensure the cost is fair and reasonable.

***Sole Source if Other Award is Infeasible:*** When the ALDOT subrecipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the subrecipient may make a sole source award (with ALDOT pre-approval). A capital maintenance item purchased directly from the original manufacturer or supplier of the item to be replaced may qualify if the manufacturer or supplier is the only source for the item and the price of the item is no higher than the price paid by like customers.

***Sole Source Cost Analysis:*** Lee-Russell Council of Governments acknowledges that a cost analysis is required when the offeror submits elements (labor hours, overhead, materials, etc.), when there is only a sole source available, or when an order is changed. Lee-Russell Council of Governments acknowledges that it 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 a change order. Lee-Russell Council of Governments acknowledges that it will not need to obtain a cost analysis where price reasonableness of the proposed contract can be justified on the basis of a catalog or market price of a commercial product sold in large quantities to the general public, or where law or regulation has established the price.

***Exercise of Options May Be Sole Source:*** The option quantities or periods contained in the contractor's bid or offer are often evaluated in order to determine contract award. Lee-Russell Council of Governments acknowledges that when options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

***Lee-Russell Council of Governments Written Request and ALDOT Pre-Approval Required:*** Lee-Russell Council of Governments will prepare the ***Sole Source Documentation Form*** (included as **Exhibit 4**) requesting a sole source procurement, along with supporting documentation, and submit these items to the Transit Section program manager for review and concurrence. The ALDOT Transit Section will then determine whether the proposed procurement shall be made as a sole source.

## **F. Emergency**

Lee-Russell Council of Governments acknowledges that purchases of this nature can be made only if a condition is present that creates a threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions. The Multimodal Transportation Engineer of the Transportation Planning and Modal Programs Bureau shall make the determination.

**Note:** If there is an emergency after normal working hours, the highest-level employee who is directly involved in the emergency shall seek as much competition as is practical to alleviate the emergency. Lee-Russell Council of Governments will then contact the Transit Section of the Transportation Planning and Modal Programs Bureau the next business day.



## G. Procurement PRO

Procurement PRO is an internet procurement tool designed to guide recipients of federal assistance through the federal procurement process. Lee-Russell Council of Governments is encouraged to use ProcurementPro to assist with the procurement process. More information is available at <http://nationalrtap.org/supportcenter/PRO-Apps/ProcurementPRO>.

## H. Revenue Contracts

*Revenue contracts* are those in which Lee-Russell Council of Governments provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA-assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then Lee-Russell Council of Governments shall use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.

## VI. BID PROTESTS/APPEALS

Lee-Russell Council of Governments acknowledges that it is required to have written protest procedures to handle and resolve disputes relating to Lee-Russell Council of Governments' procurements and shall in all instances disclose protests to ALDOT and keep ALDOT informed about the status of the protest. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the Lee-Russell Council of Governments before pursuing a protest with ALDOT.

There are three basic types of protests, based on the time in the procurement cycle when they occur.

- \* **Pre-bid or solicitation protest** is received prior to the bid opening or proposal due date.
- \* **Pre-award protest** is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
- \* **Post-award protest** is a protest received after award of a contract.

Lee-Russell Council of Governments acknowledges that it is responsible for settling disputes resulting from any procurement action. Under limited circumstances, a bidder may protest to the ALDOT Transportation Planning and Modal Programs Bureau pursuant to a vendor's award of a

contract. ALDOT shall in all instances disclose information regarding protests to FTA and keep FTA informed about the status of each protest.

ALDOT's Transportation Planning and Modal Programs Bureau's role in a bid protest shall be limited to the conditions set forth in **FTA Circular 4220.1 (series)**.

## VII. MONITORING

ALDOT is a "recipient" of Federal Transit Administration assistance. Therefore, ALDOT is responsible for ensuring that its subrecipients (including **Lee-Russell Council of Governments**) comply with the applicable requirements and standards of **FTA Circular 4220.1 (series)**, FTA's Master Agreement, and the Uniform Guidance (also referred to as the "Super Circular"), found at 2 CFR 200, which replaces and supersedes FTA's Common Grant Rules found at 49 CFR 18. ALDOT will provide technical assistance to ensure that each of its subrecipients (including **Lee-Russell Council of Governments**) is aware of the Federal statutory and regulatory requirements that apply to its actions as a subrecipient. ALDOT's Transit Section will routinely monitor subrecipients (including **Lee-Russell Council of Governments**) as described in the ***State Management Plan***.

**Lee-Russell Council of Governments** acknowledges that ALDOT Transit Section's will monitor **Lee-Russell Council of Governments'** procurement activities. ALDOT Transit Section's monitoring of procurement takes place in two (2) different time frames.

Initially, ALDOT completes the **Procurement Checklist Form** (see Transit Section ***Procurement Procedures*** at: <https://www.dot.state.al.us/tpmpweb/mp/transit.html>) that is tied to the specific purchase of an asset, piece of equipment, or service. This information is retained in the Transit Section office.

During the annual **Lee-Russell Council of Governments** compliance review, the monitor will look at policies and procedures **Lee-Russell Council of Governments** used to guide its procurements, as well as the written history documentation **Lee-Russell Council of Governments** maintains on-site.

- 1) **Lee-Russell Council of Governments** is required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and **Lee-Russell Council of Governments'** agreements (contracts). The current version of the FTA Master Agreement identifies certain clauses that apply to third party contracts.

- 2) Lee-Russell Council of Governments acknowledges that contracts may not be modified after award to include Federal clauses and so make them eligible for procuring goods and services with Federal funds. However, state/GSA-type contracts may be modified to add Federal clauses when purchase orders are issued against those state contracts. **Not all clauses apply to every contract.** The applicability of clauses depends on the size and type of contract.
- 3) Lee-Russell Council of Governments acknowledges that procurements above the micro-purchase threshold (\$10,000) must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. **A general reference to FTA guidelines is not sufficient to meet this requirement.**
- 4) Lee-Russell Council of Governments acknowledges that procurement transactions must be in a manner providing full and open competition. Lee-Russell Council of Governments acknowledges that it is prohibited from restricting competition in federally supported procurement transactions. Some situations that restrict competition include, but are not limited to:
  - a. Unreasonable qualification requirements
  - b. Unnecessary experience requirements
  - c. Excessive bonding
  - d. Noncompetitive pricing practices between firms
  - e. Noncompetitive awards to firms on retainer
  - f. Organizational conflicts of interest
  - g. "Brand name" only specifications
  - h. Any arbitrary action in the procurement process
- 5) Lee-Russell Council of Governments acknowledges that Requests for Proposal (RFPs) shall identify all significant evaluation factors, including price or cost where required, and their relative importance.
- 6) Lee-Russell Council of Governments shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offers for the purpose of written or oral discussions, and selection for contract award.
- 7) Lee-Russell Council of Governments acknowledges that it is required to ensure to the best of its knowledge and belief that none of its principals, affiliates, vendors, or third party contractors is suspended, debarred, ineligible, or voluntarily excluded from participation

(receiving funding) in Federally assisted transactions or procurements. FTA and ALDOT require review of the System for Award Management (SAM) website before entering into any third party contract expected to equal or exceed \$25,000. Lee-Russell Council of Governments will therefore print the screen with the results of the System for Award Management (SAM) website search and include it in the grant or procurement file.

**FFATA:** ALDOT, as a direct FTA recipient for grants, grant amendments, and cooperative agreements over \$25,000 awarded on or after October 1, 2010, is subject to the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA). Direct FTA recipients (such as ALDOT) must report information about each first tier subaward over \$25,000 (funds passed through to other public agencies, private nonprofit organizations or, where eligible as subrecipients, private providers of transportation) by the end of the month following the month the direct recipient makes any subaward or obligation (not the month after FTA awarded the direct grant). The general public may view FFATA information at: <https://www.usaspending.gov/Pages/Default.aspx>.

## VIII. INDEPENDENT COST ESTIMATES

**Q.** When is an independent cost estimate needed?

**A.** The independent cost estimate is a tool to assist in determining the reasonableness or unreasonableness of the bid or proposal being evaluated. Lee-Russell Council of Governments acknowledges an independent cost estimate is required for all procurements regardless of dollar amount. **FTA Circular 4220.1 (series)**, advises grantees to "perform a cost or price analysis in connection with every procurement action, including contract modifications . . . the starting point for these cost/price analyses is an independent cost estimate which is made before receiving bids or proposals." The *Best Practices Procurement & Lessons Learned Manual* released October 2016 (BPPM), Section 4.6 - Cost and Price Analysis, suggests that the independent estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications and prior procurement data. The word "independent" does not imply that it is performed by someone other than the Lee-Russell Council of Governments. This could be the case, however, if the Lee-Russell Council of Governments does not have the expertise for a large, complex procurement. The independent cost estimate is especially critical whenever there is no price competition (e.g., for architect-engineer procurements or 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). The independent cost estimate is also useful in

competitive procurements to alert ALDOT when all competitors are submitting unreasonably high cost proposals.

## **IX. RECORD RETENTION**

ALDOT requires Lee-Russell Council of Governments to retain financial records, supporting documents, and other records pertinent to an ALDOT contract in compliance with the Transit Section's record retention requirements unless the Lee-Russell Council of Governments policy is stricter. Lee-Russell Council of Governments must maintain records that detail the significant history of a procurement, to include the following:


- \* Rationale for the method of procurement (i.e., request for proposal, sole source)
- \* Selection of contract type (i.e., fixed price)
- \* Reason for contractor selection or rejection
- \* Basis for the contract price (i.e., cost/price analysis)

Lee-Russell Council of Governments acknowledges that it must retain documentation for three (3) years:

- \* After payment of final billing or completion of the project, whichever occurs last
- \* From the time litigation, claims and audit findings have been resolved, if such action was started before expiration of the 3 year period
- \* Three years from the date of asset disposal

## X. ADOPTION OF PROCUREMENT PROCEDURES

Lee-Russell Council of Governments passed and adopted these **Procurement Procedures** on the 6<sup>th</sup> day of February, 2019.

  
\_\_\_\_\_  
Mayor Ron Anders, Board Chair

ATTEST:

  
\_\_\_\_\_  
Suzanne Burnette, Executive Director

# XI. EXHIBIT 1: INDEPENDENT COST ESTIMATE (EXAMPLE AND BOILERPLATE)

\*\*\*Example for XYZ Transit System\*\*\*

(Date)

## ***Independent Cost Estimate For Shop Equipment Item A***

Description: XYZ TRANSIT SYSTEM is in need of Shop Equipment Item A with [list specifications here]. The model number requested was RJ9001. Below is a breakdown of the companies and price that helped determine the cost estimate for this purchase.

<u>Company and Website</u>	<u>Quantity</u>	<u>Unit Price</u>
<i>Example #1 Website</i>	1	\$2,623
<i>Example #2 Website</i>	1	\$3,245
<i>Example #3 Website</i>	1	\$2,849

The average cost of the above quotes is \$2,905; this price does not include installation. However, companies can be contacted for this price.

Therefore, we believe that XYZ TRANSIT SYSTEM will be able to find the required Shop Equipment Item A for the price range of \$2,905-\$3,245. Standard installation will need to be included.

# INDEPENDENT COST ESTIMATE

\*\*\*\*Modify this boilerplate as necessary to suit the item and then delete this line\*\*\*\*

[Date]

## ***Independent Cost Estimate For [Add Description]***

Description: Lee-Russell Council of Governments is in need of [Describe Item] with [list specifications here]. The [model number or particulars] requested was [list model number or other identifier]. Below is a breakdown of the companies and price that helped determine the cost estimate for this purchase.

<u>Company and Website</u>	<u>Quantity</u>	<u>Unit Price</u>
[Company] [Website]	[List Number]	[List Price]
[Company] [Website]	[List Number]	[List Price]
[Company] [Website]	[List Number]	[List Price]

The average cost of the above quotes is [\$ ]; this price [does or does not] include installation. However, companies can be contacted for this price.

Therefore, we believe that Lee-Russell Council of Governments will be able to find the required [Describe Item] for the price range of [low price - high price ];. Standard installation [is or is not applicable] and [will or will not] need to be included.



## XII. EXHIBIT 2: PRICE ANALYSIS (EXAMPLE ONLY)

### **XYZ TRANSIT SYSTEM**

#### **Price Analysis for Shop Equipment Item A**

##### **Form of Price Analysis used:**

- (1) **Adequate price competition** ✓
- (2) Prices set by law or regulation
- (3) Established catalog prices and market prices
- (4) Comparison to previous purchases
- (5) Comparison to a valid independent estimate
- (6) Value analysis

**XYZ TRANSIT SYSTEM determines that all of the following adequate price competition conditions have been met:**

- (1) At least two responsible offerors respond to a solicitation. ✓
- (2) Each offeror must be able to satisfy the requirements of the solicitation. ✓
- (3) The offerors must independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price. ✓
- (4) Each offeror must submit priced offers responsive to the expressed requirements of the solicitation. ✓

##### **Summary:**

XYZ TRANSIT SYSTEM received three quotes for RJ9001 Shop Equipment Item A with [list specifications here] capacity and installation.

- \* All three Quotes for Shop Equipment Item A were in line with the Independent Cost Estimate price range of \$2,905-\$3,245.
- \* All quotes were for the same purchase of a RJ9001 Shop Equipment Item A with [list specifications here] capacity and installation
- \* Three responses were received as follow:

*Company Name #1 - \$3,218*

*Company Name #2 - \$3,345*

*Company Name #3 - \$3,882*

***All quotes are considered responsive and award is appropriately made to Company Name #1, (lowest quote) in the amount of \$3,218, which XYZ TRANSIT SYSTEM determines to be a fair and reasonable price.***

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### XIII. EXHIBIT 3: COST ANALYSIS FOR A & E

TRANSIT AGENCY NAME

Cost Analysis  
for

Architecture & Engineering's Services for Transit Facility Renovations

Summary of Comparisons of current estimated costs and comparison to a valid independent estimate:

- (1) Actual costs previously incurred.  
**Cost Estimate-** See Independent cost estimate attached. The independent cost estimate for Architecture & Engineering's Services for Transit Facility Renovations was determined to be in the range of blank to blank. This was based on a history of previous costs charged to other transit providers for similar A&E Services.

Previous Costs	Vendor Name	Agency Name	Type of Work
<u>\$blank</u>	<u>Blank</u>	<u>Blank</u>	<u>Blank</u>
<u>\$blank</u>	<u>Blank</u>	<u>Blank</u>	<u>Blank</u>
<u>\$blank</u>	<u>Blank</u>	<u>Blank</u>	<u>Blank</u>

- (2) The most recent cost estimate for the same or similar items.

Current Cost	Vendor Name	Agency Name	Type of Work
<u>\$blank</u>	<u>Blank</u>	<u>Blank</u>	<u>Blank</u>

- (3) Current cost estimates from other possible sources providing the same or similar product or service.

Current Costs Estimates	Vendor Name	Agency Name	Type of Work
<u>\$blank</u>	<u>Blank</u>	<u>Blank</u>	<u>Blank</u>
<u>\$blank</u>	<u>Blank</u>	<u>Blank</u>	<u>Blank</u>
<u>\$blank</u>	<u>Blank</u>	<u>Blank</u>	<u>Blank</u>

Summary:

Agency Name received blank proposals/qualifications/bids for A&E Services for Transit Facility Renovations. Vendor name was determined to be the highest ranked proposal, most qualified, lowest bid and submitted a cost for their services in the amount of \$blank.

All proposals/qualifications/bids are considered responsive and award is appropriately made to Vendor name (highest ranked proposal, most qualified, lowest bid) in the amount of \$blank which Agency name determines to be a fair and reasonable price.

\_\_\_\_\_  
Signature- Transit Agency Name

\_\_\_\_\_  
Title - Transit Agency Name

\_\_\_\_\_  
Date

# XIV. EXHIBIT 4: SOLE SOURCE DOCUMENTATION FORM

## SOLE SOURCE DOCUMENTATION FORM

DATE: \_\_\_\_\_ P.O. OR REQUISITION NUMBER: \_\_\_\_\_

VENDOR: \_\_\_\_\_ TOTAL COST: \_\_\_\_\_

DEPARTMENT/DIV: \_\_\_\_\_ REQUISITIONER: \_\_\_\_\_

Please read the **Sole Source Procurement Policy** (NEXT PAGE) before filling out this request.

Briefly describe the scope of services or equipment needed.

---

This purchase qualifies as a sole source procurement for the following reason(s):

- The compatibility of equipment is of paramount consideration.
- The compatibility of accessories or replacement parts is of paramount consideration.
- The sole source supplier's item is needed for trial use or testing.
- The sole source supplier's item is to be procured for resale or donation.
- A public utility service.
- Other, please explain: \_\_\_\_\_

---

**Outline any research** you did in determining that this vendor is the only one able to supply this item or service. Be specific as to names and addresses of firms or people contacted. Attach supportive documentation.

(USE ADDITIONAL PAPER IF NECESSARY)

DEPARTMENT HEAD NAME, PRINTED: \_\_\_\_\_

Department Head Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **SOLE SOURCE PROCUREMENT POLICY**

### ***Definition***

A contract may be awarded for goods or services without competition when the Purchasing Agent, designee, or Department Head determines that there is only one source for the required goods or services based upon written justifications. When the determination is made by a Department Head that there is only one source, the written justifications for such determination must be submitted to the Purchasing Agent for approval. If the purchase exceeds **\$10,000.00**, it must be approved by the Purchasing Agent prior to purchase.

### ***Application***

The provisions of this Section apply to all sole source procurement unless emergency conditions exist as defined by Purchasing Policy on Emergency Procurement.

### ***Conditions for Use of Sole Source Procurement***

Sole source procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary product normally does not justify a sole source procurement if there is more than one potential supplier of that product. The following are examples of circumstances which could necessitate sole source procurement:

- a) where the product or service is a one-of-a-kind item obtainable from no other source
- b) where the compatibility of the product to existing equipment is the paramount consideration
- c) where the compatibility of accessories or replacement parts to an existing system is the paramount consideration
- d) where a sole supplier's item is needed for trial use or testing
- e) where additional services from the contracted vendor are required to complete an ongoing project
- f) where the sole supplier is a public utility service

In cases of reasonable doubt, competition should be solicited. Any request by a Department that a procurement be restricted to one potential vendor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

### ***Negotiation in Sole Source Procurement***

The Purchasing Agent, in conjunction with the requisitioning Department, will conduct negotiations, as appropriate, as to price, delivery, and terms.

# XV. EXHIBIT 5: PROCUREMENT CHECKLIST FORM

Revised 3/10/17

<b>Agency:</b> _____ <input type="checkbox"/> 5311 <input type="checkbox"/> 5310 <input type="checkbox"/> 5307
<b>Purchase Request:</b> <input type="checkbox"/> Equipment <input type="checkbox"/> Supplies <input type="checkbox"/> Services
<b>Item(s):</b> _____
<b>Estimated Total Cost:</b> _____
<b>Describe Purpose:</b> _____ _____ _____

- |   |   |                          |    |     |                          |                          |                          |  |
|---|---|--------------------------|----|-----|--------------------------|--------------------------|--------------------------|--|
| <b>I. <u>\$10,000 or less – (at least two written quotes required)</u></b>  | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">YES</td> <td style="text-align: center;">NO</td> <td style="text-align: center;">N/A</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> | YES                      | NO | N/A | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |  |
| YES   | NO  | N/A                      |    |     |                          |                          |                          |  |
| <input type="checkbox"/>  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 1. Written documentation of agency/organization’s informal procurement methods  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 2. Copy of the price or rate quote  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| <b>II. <u>\$10,000 – \$250,000 (at least two written quotes required)</u></b>   | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">YES</td> <td style="text-align: center;">NO</td> <td style="text-align: center;">N/A</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table> | YES                      | NO | N/A | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |  |
| YES   | NO  | N/A                      |    |     |                          |                          |                          |  |
| <input type="checkbox"/>  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 1. Copy of written request to ALDOT to purchase equipment, property, supplies or services \$3,001 - \$15,000  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| A. Copy of Cost Estimate (Prepared prior to getting quotes)   | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| B. Copies of Quotes solicited from at least (2) two suppliers   | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| C. The quote clearly and accurately described the technical requirements  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| D. The project has clearly set forth the requirements the vendor must fulfill   | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| E. The project has made positive efforts to utilize disadvantaged business enterprises  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| F. Documentation of search on the System for Awards Management (SAM) to identify debarred or suspended bidders at <u><a href="http://www.SAM.gov">www.SAM.gov</a></u> | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 2. Copy of the cost breakdown for the proposed project  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 3. Copy of Cost Price Analysis (Prepared after receipt of Quotes)   | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 4. Purchasing Schedule  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 5. Written notice to proceed (and recommendations) from ALDOT   | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 6. Copy of the Third Party Contract (with required contract clauses)  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |
| 7. Written notice for processing changes in purchase orders to ALDOT  | <input type="checkbox"/>  | <input type="checkbox"/> |    |     |                          |                          |                          |  |

III. \$15,001.00 and above (bid required)

YES	NO	N/A
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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|---|--------------------------|--------------------------|--------------------------|
| 1. Copy of written request to ALDOT to purchase equipment, property, supplies or services \$15,001 and above  |                          |                          |                          |
| A. Advertising for competitive bids once a week for (2) consecutive weeks in a regular newspaper (published in the county or municipality in which such agency or governing authority is located) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Proposed purchase terms, conditions, technical specifications and bid advertisement(s) to ALDOT  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 1) Bid requests advertised in at least one newspaper with general daily circulation within the project's service area   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2) Bid requests mailed directly to potential bidders throughout the service area  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Copy of the Request for Proposal (RFP)   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Copy of Independent Cost Estimate (Prepared prior to RFP Release)  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Copy of Cost Price Analysis (Prepared after receipt of Proposals)  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F. Sole Source (Single Source) Justification ( <i>if applicable</i> )   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Market Research Documents  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| H. Procurement Plan and Timeline  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I. Bidders List   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| J. Solicitation and Amendments  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| K. Pre-Solicitation Approvals   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| L. Pre-Bid or Proposal Conference Notes and Questions and Answers ( <i>if applicable</i> )  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| M. Bids / Proposals and Solicitation Amendment Acknowledgements   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| N. "No Bid" Letters or Offeror Disqualification Correspondence  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| O. Negotiation Memorandum ( <i>if applicable</i> )  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| P. Protests ( <i>if applicable</i> )  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Q. Copy of RFP evaluation of proposal   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| R. Copy of explanation of the basis for selection of contractor – including evaluation criteria and results of the subrecipient's technical evaluation  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| S. Copy of a list of all proposals received   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| T. Copy of a cost breakdown for the proposed contract   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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|---|--------------------------|--------------------------|--------------------------|
| U. Copy of the bid advertisement  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| V. Copy of the final bid specifications   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| W. Notice of Intent to Award  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Written notice to proceed (and recommendations) from ALDOT (prior to the execution of an agreement between the subrecipient and the selected bidder)                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| A. Recommendation(s) made by the project as to bid award  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Documentation of search on the System for Awards Management (SAM) to identified debarred or suspended bidders at <u><a href="http://www.SAM.gov">www.SAM.gov</a></u> . | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Copies of the bids submitted along with any pertinent correspondence relating to exceptions to the approved specifications   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Documentation of agency procedures for processing change orders in equipment purchased   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Documentation/notice to ALDOT for change orders (that affect the contract price)   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Copy of the Third Party Contract (with required federal contract clauses, must be included with all contracts/purchase agreements)                                     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. General Contract Correspondence  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Contract Close-Out   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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