

Kootenai County Transit Procurement Policy



**Effective 6 December 2011
Amended 9 September 2014**

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FTA MASTER AGREEMENT

<http://www.fta.dot.gov/documents/20-Master.pdf>

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Section 1. PURPOSE

(a) The objectives of the Kootenai County Transit Procurement Policy for the bidding of transit related contracts are to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to ensure that the County receives the best goods and services at the most reasonable price practicable.

(b) Many procurement actions on behalf of transit services, vehicles, equipment, and facilities are in conjunction with Federal and State grants and assistance programs, and Federal and State law seeks to ensure that Federal and State funds are expended according to sound procurement principles.

(c) It is necessary and desirable that the County maintains procedures for the accomplishment of its capital expenditures (facilities, vehicles, et al.) for the purchase of services, supplies and materials, and for the performance of necessary work and services.

(d) It is the County's goal to provide fair and open participation in procurements by qualified and competent suppliers, contractors, and consultants, including state certified disadvantaged business enterprises in accordance with State of Idaho and Federal requirements.

Section 2. REFERENCES TO LAWS AND REGULATIONS

(a) All references herein to the "FTA Circular" are to the FTA Circular C 4220.1F, dated November 1, 2008, with subsequent revisions of April 14, 2009, July 1, 2010, February 15, 2011, and March 18, 2013, or as may be hereafter amended or superseded.

(b) All references herein to the "FTA Grant Master Agreement" are to the Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008, the Transportation Equity Act for the 21st Century, as amended, the American Recovery and Reinvestment Act of

2009, Pub. L. 111-5, February 17, 2009, or other Federal laws that FTA administers, or as may be hereafter amended or superseded.

(c) All references to provisions of the United States Code, Idaho Statutes, and other FTA, State, and local regulations and guidance (such as FTA Circular C5010.1D “Grant Management Guidelines” and the “Best Practices Procurement Manual”, the Certifications and Assurances the County must follow regarding federal compliance by grant and project, etc.) are to current provisions and regulations, or as may be hereafter amended or superseded.

Section 3. ADMINISTRATIVE RESPONSIBILITY AND AUTHORIZATIONS

(a) The Board of County Commissioners is responsible for all policy matters in the administration of the County and for ensuring compliance with all Federal, State, and local procurement laws and regulations, in consultation with the Prosecuting Attorney or his/her designee.

(b) The FTA Administrator has the responsibility as identified in these procedures for the procurement of all transit related goods and services and to assure the Procurement Policy is amended, as needed to comply with FTA requirements. Administrative amendments that do not materially change the intent of this policy are authorized by the Board to be performed by the FTA Administrator. Directives or initiatives by the Board shall be implemented through the FTA Administrator.

(c) The approval of procurements shall be as follows:

Transit Procurement Authorizations		
Procurement Type	Dollar Amount	Approval Authority
Micro Purchases	≤\$3,000	FTA Administrator
Small Purchases	\$3000 – \$50,000 for public works construction \$3,000 – \$25,000 for other purchases where bidding is required	Board of Commissioners
Sealed Bids/ Invitation for Bids (IFB)	≥\$50,000 for public works construction >\$25,000 for other purchases where bidding is required	Board of Commissioners
Architectural, Engineering, and Related Services (A&E)	Any Amount	Board of Commissioners
Revenue Contracts	Any Amount	Board of Commissioners
Service Contracts	Any Amount	Board of Commissioners
Transit Facility Construction	Any Amount	Board of Commissioners

(d) Except as otherwise provided by the Board, for all contracts for which Board approval has been obtained (either on a project-wide or individual contract basis), or the FTA Administrator or his/her designee is authorized to take all further steps necessary for completion of the work; including, but not limited to: publication of notice calling for bids or proposals; rejection of bids, proposals, or award of contract; canceling or delaying bid or proposal openings; evaluation and analysis of the proposal or bid including cost/price analysis, independent cost estimate, past performance of the contractors, assurance of the contractor performance relating to any past debarment or suspension for prior related work, and to determine the responsiveness of the proposal or bid in meeting requested submittal requirements; administration of contracts, including execution of contract change orders and determination of retainage, bonds, and insurance; oversight of the contractor's performance to meet the terms, conditions, and specifications of the contracted goods or services; acceptance or rejection of work; termination of contract; contract close-out; and claims negotiations and settlements. Such actions shall be consistent with applicable State and Federal legal requirements and County policies.

Section 4. GENERAL SCOPE

- (a) **Solicited Proposals.** All procurement transactions, regardless of whether by verbal or written quote, by sealed bid, or by competitive negotiation, shall be conducted in a manner that provides, to the fullest extent possible, maximum full and open competition.
- (b) **Competition Defined.** Competition in procurement is defined as a condition where two or more sources are able to compete for a requirement in price and/or technical skills.
- (c) **Unsolicited Proposals.** Procurement transactions may also be based on an unsolicited proposal as defined in Chapter I of the FTA Circular.

Section 5. PROCUREMENT RESTRICTIONS

Procurement procedures should not restrict or eliminate competition or support an exclusionary or discriminatory specification, including:

- (a) Placing unreasonable requirements on prospective contractors in order for them to qualify to do business.

- (b) Supporting or allowing noncompetitive pricing practices between contractors or affiliated companies. Questionable practices include, but are not limited to, submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.
- (c) Requiring unnecessary or unreasonable experience and performance requirements.
- (d) Specifying only a "brand name" product without allowing offers of an "equal" or "equivalent" product, or allowing an "equal" or "equivalent" product without listing the salient characteristics that the "equal" or "equivalent" product must meet to be acceptable for award.
- (e) Requiring unreasonable, unduly restrictive or excessive bonding requirements.
- (f) Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulations, except that geographic location may be a selection criterion for architectural, engineering, and other related services (A&E services).
- (g) Supporting or allowing organizational conflicts of interest.
- (h) Any arbitrary and capricious action in the procurement process.

Section 6. PROCUREMENT STANDARDS

The following standards shall be applicable to all County transit related procurements:

- (a) A review of all proposed procurements by the Transit Administrator and a Civil Deputy Prosecuting Attorney.
- (b) When contracting for professional services, the contract shall limit the total of the base and option time periods to not more than five years, unless approved by the Board. Prices for each base and option time period shall be firm and fixed wherever possible and shall be established in the initial contract bidding, negotiation, and execution. If it is not possible to establish firm, fixed prices, changes in the option period prices shall be tied to a well known, published pricing index, such as the Consumer Price Index.
- (c) The County shall maintain a contract administration system that ensures contractors perform in accordance with the terms and conditions, and specifications of their contract.

(d) The County must perform a cost or price analysis in connection with every procurement action, but as a starting point, grantees must make an independent estimate before receiving bids or proposals. Cost and price analysis (which logically begins with an in-house cost estimate) is a requirement for every contract. An in-house cost estimate should be developed for each procurement action, and the estimate must be documented in some form.

Section 7. ADDITIONAL PROCUREMENT REQUIREMENTS WHEN FEDERAL FUNDS ARE USED

The following additional requirements shall be applicable for each transit-related procurement for which Federal funds are used:

- (a) **Description of Property or Services.** The solicitation and the contract awarded hereunder must include a clear and accurate description of the technical requirements for the property or services to be acquired in a manner that provides for full and open competition.
- (b) **What to Include.** The requirements should be described in terms of functions to be performed or levels of performance required, including the range of acceptable characteristics or minimum acceptable standards, but use of detailed technical specifications are permitted when appropriate.
- (c) **Quantities Limited to Actual Needs.** Procurements shall be limited to the amount necessary to support the quantity of property or extent of services actually needed. Quantities or options may not be added to contracts solely to allow these quantities or options to be assigned at a later date.
- (d) **Evaluation Factors.** The solicitation must identify all factors to be used evaluating bids or proposals.
- (e) **Contract Type Specified.** The specifications should state the type of contract that will be awarded, such as a firm fixed price contract or cost reimbursement contract as defined in the FTA Circular. The reason for the selection of type of contract to be awarded will be documented in the procurement files.
- (f) **Award to Other than the Low Bidder.** If the right to award to other than the low bidder is to be reserved, that information shall be stated in the solicitation document.

- (g) **Rejection of All Bids or Offers.** If the right to reject all bids or offers is to be reserved, that information shall be stated in the solicitation document.
- (h) **Products and Services.** Products and services that conserve natural resources, protect the environment, and are energy efficient are to be preferred, and products and services dimensioned in the standard system of measurement are to be accepted, to the extent practicable and economically feasible.
- (i) The solicitation and resulting contract must identify those Federal requirements set forth in current provisions and regulations, including Chapter IV, subsection 2.b of the FTA's latest Circular - C 4220.1F and Master Agreement, or as those may be hereafter amended or superseded.
- (j) The solicitation and resulting contract must identify those Federal requirements that a bidder or offeror must fulfill before and during contract performance as set forth in current provisions and regulations, including Chapter IV, subsection 2.b of the FTA's latest Circular - C4220.1F and Master Agreement, or as those may be hereafter amended or superseded.
- (k) Procurements must otherwise comply with Federal laws and regulations, including those set forth in current provisions and regulations, including Chapter IV, subsection 2.b of the FTA's latest Circular - C 4220.1F and Master Agreement, or as those may be hereafter amended or superseded, that impose cost rates and restrictions, civil rights and environmental protection requirements applicable to the procurement, and audit service and audit procurement requirements. The County must implement those requirements as necessary through its third party contracts.

Section 8. ETHICAL STANDARDS OF CONDUCT

No employee, officer, or agent of County shall participate in the selection, or in the award or administration of a contract, if a conflict of interest, real or apparent, direct or indirect, would be involved. Such a conflict would arise when:

- (a) The employee, officer, agent or board member has a financial or other interest in the firm selected for contract award.
- (b) Any member of his/her immediate family has a financial or other interest in the firm selected for contract award.

- (c) His/her partner has a financial or other interest in the firm selected for contract award.
- (d) An organization that employs, or is about to employ, any of the above.
- (e) County's officers, employees, or agents shall neither solicit nor accept gratuities, gifts, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Only unsolicited items of nominal intrinsic value may be accepted from such parties, for example, an occasional business meal or advertising souvenirs.
- (f) County, its employees and directors, shall also comply in all respects with applicable laws, rules and regulations governing ethical standards of conduct.

Section 9. ORGANIZATIONAL CONFLICT OF INTEREST

- (a) Each planned acquisition must be analyzed in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.
- (b) Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under a County contract. An example would be when 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.

Section 10. METHODS OF PROCUREMENT

Procurement shall be achieved by one of the following methods as defined in the FTA Circular:

- (a) Micro-purchase (less than \$3,000).
- (b) Small purchase (\$3,000 to \$50,000 for public works construction, \$3,000 to \$25,000 for all other purchases where bidding is required – State of Idaho limit, which is more conservative than FTA limit of \$100,000).
- (c) Competitive sealed bid (Invitation for Bids - IFB) greater than \$50,000 for public works construction, greater than \$25,000 for all other purchases where bidding is required – State of Idaho limit, which is more conservative than FTA limit of \$100,000).
- (d) Competitive proposal (Request for Proposals - RFP) –same standard as applies to competitive sealed bids.

- (e) Architectural, Engineering, and other related services (A&E services), in accordance with Idaho Code § 67-2320.
- (f) Design-bid-build.
- (g) Design-build, subject to the requirements of federal and state law.
- (h) Emergency and Sole Source procurement and other than full and open competition, when allowed under federal and state law.
- (j) For purposes of determining the appropriate procurement method, value of the procurement shall be determined without allowance for tax and/or freight.
- (k) Where federal and state law prescribe different standards or requirements, the more restrictive provision shall take precedence except in instances where federal law clearly preempts (or has been found to preempt) inconsistent state law.

Section 11. MICRO-PURCHASES (Less than \$3,000)

- (a) Micro-purchase procedures shall be used for purchases of materials, equipment, supplies, work and/or services for the County when the total price is valued at or less than the maximum micro-purchase amount set forth in Chapter VI, subsection 3.a of the FTA Circular (currently any price valued less than \$3,000). These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements will apply to construction purchases over \$2,000 in accordance with federal and state law, however, even though micro-purchase procurement procedures are used.
- (b) The following procedures apply to micro-purchases:
 - 1) Micro-purchases should be distributed equitably among qualified suppliers.
 - 2) The size of the procurement may not be divided or reduced merely to come within the micro-purchase limit.
 - 3) The determination that the price is fair and reasonable and a description of how that determination was made is required, and shall be documented.

Section 12. SMALL PURCHASES (\$3,000 to \$50,000 for public works construction, \$3,000 to \$25,000 for all other purchases where bidding is required – State of Idaho limit, which is more conservative than FTA limit of \$100,000)

Small purchase procedures shall be used for purchases of materials, equipment, supplies, work and/or services for the County when the total value is more than the micro-purchase threshold, but less than \$50,000. These purchases are also exempt from FTA's Buy America requirements.

The following procedures apply to small purchases:

- (a) Price or rate quotations must be obtained from at least three qualified sources. The FTA Administrator, in consultation with Prosecuting Attorney or his/her designee, shall be responsible for evaluating the adequacy of quotations for small purchases and advising the Board of Commissioners on the same.
- (b) The size of the procurement may not be divided or reduced merely to avoid additional procurement requirements applicable to larger acquisitions.
- (c) For procurements over \$3,000, an independent cost estimate must be conducted and documented to determine an estimated cost of materials, equipment, supplies, work and/or services prior to receiving bids or proposals.
- (d) At least two price quotations for materials, equipment, and supplies shall be documented.
- (e) A cost or price analysis will be documented for every procurement, including contract modifications, change orders, and sole source, to determine whether competition and price were adequate.

Section 13. COMPETITIVE SEALED BID – INVITATION FOR BIDS/REQUEST FOR PROPOSALS

All procurements not specifically outlined or excepted by another method of procurement contained in this policy or authorized by law shall be made by competitive sealed bid.

- (a) An **Invitation for Bids (IFB)/Request for Proposals (RFP)** shall be utilized in all cases where each of the following conditions is present:

- 1) A complete, adequate, precise, and realistic specification or purchase description is available.

2) Two or more responsible bidders are expected to be willing and able to compete effectively for the business.

3) The procurement generally lends itself to a firm fixed price contract.

4) The successful bidder can be selected on the basis of price and the price related factors listed in the IFB/RFP including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.

(b) A **pre-bid/proposal conference** may be held in competitive sealed bid situations, for the purpose of answering questions and clarifying the requirements and specifications relevant to the Invitation for Bids or the Request for Proposals. Notice for such pre-bid/proposal conference shall be advertised and stated in the general requirements section of the IFB or the RFP. A pre-bid conference must not be mandatory, however, when FTA funds are being used.

(c) **Procurement Procedures.** The following procedures apply to sealed bid procurements:

1) The Board of Commissioners or their designee shall cause the IFB/RFP to be publicly advertised in an appropriate publication and web site posting(s) at least twice, and at least seven and 14 calendar days prior to the bid opening.

2) Bids must be solicited from an adequate number of qualified sources.

3) The IFB/RFP, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.

4) The IFB/RFP shall specify the scope of the County's right to award the contract to other than the low bidder, and its right to reject all bids or offers.

5) For procurements over \$3,000, an independent cost estimate is required to determine the estimated cost of materials, equipment, supplies, work and/or services prior to receiving bids or proposals.

6) Price quotations (at least 2) for materials, equipment, and supplies shall be documented

7) A cost analysis (i.e., evaluating the contractor's specific elements of estimated cost and profit) is required for contract modifications, change orders, and when contracting on a sole

source basis. The cost analysis shall be documented and placed in the procurement file. (d)

Public Opening of Bids.

- 1) All bids shall be opened and read publicly at the time and place designated in the IFB/RFP notice.
- 2) The name and address of each bidder, the bid price, and any other relevant information as specified in the IFB shall be read aloud and recorded in the minutes of the bid opening.
- 3) It shall be also announced that the bid review will be completed by County staff and legal counsel, and the date of the meeting at which the Board of Commissioners are expected to award the contract.
- 4) The contract shall be awarded to the lowest responsive bidder. If the apparent low bid is found to be non-responsive, the reasons for the determination shall be stated on the record.
- 5) All bidders will be notified of award postponement and of the contract award.
- 6) The purchase record, including each bid, shall be open to public inspection following contract award.
- 7) The Board of Commissioners may reject all bids if there is a sound, documented business or legal reason.

Section 14. COMPETITIVE PROPOSAL – REQUEST FOR PROPOSAL

A Request for Proposal (RFP) shall be utilized when the procurement lacks definite specifications, when proposals are sought for the purpose of establishing a bid specification, when the goods or services being procured involve creative design or professional administration, and/or when subjective criteria is considered in the contract award, which is made in the best interests of the County.

(a) **Procurement Procedures.** The following procedures apply to procurements by competitive proposals:

- 1) The Board of Commissioners or its designee shall cause the request for proposal (RFP) to be publicly advertised in an appropriate publication and web site posting(s) at least twice for 7 and 14 calendar days prior to the proposal opening.

- 2) The RFP shall identify all significant evaluation factors and their relative weighted importance.
- 3) Proposals shall be solicited from an adequate number of qualified sources.
- 4) The RFP shall specify the scope of the County's right to award the contract to other than the low bidder and its right to reject all bids or offers.
- 5) For procurements over \$3,000, an independent cost estimate will be documented to determine an estimated cost of materials, equipment, supplies, work and/or services prior to receiving bids or proposals. Procurement actions below \$3,000 require documentation that the price is fair and reasonable and a description of how that determination was made by the County.
- 6) Price quotations (at least 2) for materials, equipment, and supplies shall be documented.
- 7) A cost analysis (i.e., evaluating the contractor's specific elements of estimated cost and profit) is required for contract modifications, change orders, and when contracting on a sole source basis. The cost analysis shall be documented and placed in the procurement file.
- 8) The contract shall be awarded to the lowest responsive bidder if required by state or federal law. In such cases, if the apparent low bid is found to be non-responsive, the reasons for the determination shall be stated on the record.

Section 15. ARCHITECTURAL, ENGINEERING, AND OTHER RELATED SERVICES (A&E) SERVICES

- (a) The use of qualifications-based procurement procedures based on the "Brooks Act," 40 U.S.C. §§ 1101-1104, and Idaho Code § 67-2320, shall be used when County seeks to acquire architectural and engineering services, such as program management, construction management, feasibility studies, preliminary and final engineering and design, architectural, engineering, surveying, mapping, and other related services set forth in 49 U.S.C. § 5325(b) (collectively referred to in this Policy as "A&E Services").
- (b) Qualifications-Based Procurement Procedures. Currently, the applicable procedures are as follows:

- 1) The Board of Commissioners or its designee shall cause to be distributed a concise announcement of the general scope and nature of the project or work for which the services are required, and the address of a County representative who can provide further details. Said distribution shall be in conformance with Idaho Code § 67-2320, and shall be published in the appropriate local newspaper at least 7 and 14 days prior to the bid opening.
- 2) The most qualified offeror may be selected subject to negotiation of a fair and reasonable compensation. Price shall not be considered as an evaluation factor in determining the most qualified offeror.
- 3) Negotiations shall first be conducted only with the most qualified offeror. Only after failing to agree on a fair and reasonable price shall negotiations be conducted with the next most qualified offeror until a contract award can be made to the offeror whose price is determined to be fair and reasonable.
- 2) The RFP shall identify all significant evaluation factors and their relative weighted importance.
- 3) Proposals shall be solicited from an adequate number of qualified sources.
- 4) The RFP shall specify the scope of the County's right to award the contract to other than the low bidder and its right to reject all bids or offers.
- 5) For procurements over \$3,000, an independent cost estimate must be conducted to determine the estimated cost of materials, equipment, supplies, work and/or services prior to receiving bids or proposals.
- 7) At least two price quotations) for materials, equipment, and supplies shall be documented.
- 8) A cost analysis (i.e., evaluating the contractor's specific elements of estimated cost and profit) is required for contract modifications, change orders, and when contracting on a sole source basis. The cost analysis shall be documented and placed in the procurement file.
- 8) A cost analysis for all awards for which competitive cost/price proposals are not obtained. This would always include A&E (Brooks Act) contracts, including small

purchases. The County is required to obtain a cost breakdown from the A&E contractor and evaluate the direct and indirect costs and proposed profit. The independent cost estimate (ICE) must be structured on a cost element, not lump sum, basis since the FTA policy requires a detailed cost proposal and the ICE's usefulness as a cost analysis tool can only be realized if the ICE enables an evaluation of the cost elements in the proposal. As for negotiating a price that exceeds the ICE, the County must explain (1) how the various costs and profit were evaluated, (2) how contract price was negotiated, and (3) to make an affirmative written determination that the price agreed upon is fair and reasonable.

Section 16. DESIGN – BID – BUILD

Design-bid-build procedures may be used for contracts for design services and for construction of transportation facilities. If the County elects this method, relevant provisions of the Idaho Code and other applicable state requirements will be used to establish the minimum procedures.

- (a) For design services, qualifications-based procurement procedures must be used in compliance with the FTA Circular and applicable Federal, State and local law and regulations.
- (b) Qualifications-Based Procurement Procedures. Currently, the applicable procedures are as follows:

- 1) The Board of Commissioners or its designee shall cause to be distributed a concise announcement of the general scope and nature of the project or work for which the services are required, and the address of a County representative who can provide further details. Said distribution shall be in conformance with Idaho Code § 67-2320, and shall be published in the appropriate local newspaper at least 7 and 14 days prior to the bid opening.

- 2) The most qualified offeror may be selected subject to negotiation of a fair and reasonable compensation. Price shall not be considered as an evaluation factor in determining the most qualified offeror.

- 3) Negotiations shall first be conducted only with the most qualified offeror. Only after failing to agree on a fair and reasonable price shall negotiations be conducted with the

next most qualified offeror until a contract award can be made to the offeror whose price is determined to be fair and reasonable.

2) The RFP shall identify all significant evaluation factors and their relative weighted importance.

3) Proposals shall be solicited from an adequate number of qualified sources.

4) The RFP shall specify the scope of the County's right to award the contract to other than the low bidder and its right to reject all bids or offers.

5) For procurements over \$3,000, an independent cost estimate will be conducted to determine an estimated cost of materials, equipment, supplies, work and/or services prior to receiving bids or proposals.

6) At least two price quotations - for materials, equipment, and supplies shall be documented.

7) A cost analysis (i.e., evaluating the contractor's specific elements of estimated cost and profit) is required for contract modifications, change orders, and when contracting on a sole source basis. The cost analysis shall be documented and placed in the procurement file.

8) A cost analysis for all awards for which competitive cost/price proposals are not obtained. This would always include A&E (Brooks Act) contracts, including small purchases (i.e., those under \$100,000). The grantee is required to obtain a cost breakdown from the A&E contractor and evaluate the direct and indirect costs and proposed profit. The independent cost estimate (ICE) must be structured on a cost element, not lump sum, basis since the FTA policy requires a detailed cost proposal and the ICE's usefulness as a cost analysis tool can only be realized if the ICE enables an evaluation of the cost elements in the proposal. As for negotiating a price that exceeds the ICE, FTA has no policy restrictions in this regard but does require the grantee to explain (1) how the various costs and profit were evaluated, (2) how contract price was negotiated, and (3) to make an affirmative written determination that the price agreed upon is fair and reasonable.

(c) For services related to the actual construction, alteration or repair of real property, competitive bidding shall be used in compliance with the latest FTA Circular and applicable Federal and State laws and regulations. See Section 13 of this Policy.

Section 17. DESIGN – BUILD

Design-build procedures may be used when the County contracts for design and construction simultaneously with a contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.

(a) The various contract activities to be undertaken shall be classified as design or construction and the estimated total value of each shall be calculated.

(b) When estimated construction costs exceed \$50,000, qualifications-based procurement procedures may not be used to acquire A&E and other services to which Section 15 of this Policy is applicable, unless FTA determines otherwise in writing or unless required by State law.

(c) When A&E services are predominant and the estimated construction cost is under \$50,000, qualifications-based procurement procedures based on the Brooks Act shall be used. See Section 15 of this Policy.

Section 18. EMERGENCY PROCUREMENT AND OTHER THAN FULL AND OPEN COMPETITION

Noncompetitive procurement processes may be used only when allowed by law and the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances is present:

(a) **Competition Adequacy.** The County determines that competition is adequate after soliciting from several sources, and after determining that its specifications are not unduly restrictive and changes cannot be made to encourage greater competition. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

(b) **Sole Source.** A sole source award may be made where at least one of the following circumstances is present:

- 1) The supplies or services are available only from a single source (as defined in Chapter VI, subsection 3.i of the latest FTA Circular and Idaho Code § 67-2808) and no other supplies or services will satisfy the County's requirement.

2) Upon receiving a single bid or proposal in response to a solicitation, the County determines that competition was adequate.

3) An emergency, as defined in Idaho Code § 67-2808, exists requiring the procurement of property or services and the County would be seriously injured unless it was permitted to limit the solicitation or a sufficient emergency exists for the requirement that will not permit the delay of competitive solicitation. The Board of Commissioners declares and authorizes an emergency procurement. The Board at its next regular meeting shall ratify emergency procurements.

(c) FTA has authorized noncompetitive proposals, including the authorizations set forth in Chapter VI, subsection 3.i (l)(e) of the latest FTA Circular. FTA does not; however, authorize noncompetitive proposals that are justified on the basis of failure to plan.

(d) **Procurement Procedures.** The following procurement procedures apply when less than full and open competition is available:

1) Offers shall be solicited from as many potential sources as is practicable under the circumstances.

2) If an offer is solicited from only one source, that decision must be adequately justified in writing based on the standards set forth in the latest FTA Circular and Idaho Code § 67-2808.

3) A cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits shall be prepared.

4) For procurements over \$3,000, an independent cost estimate will be conducted to determine the estimated cost of materials, equipment, supplies, work and/or services prior to receiving bids or proposals.

5) At least two price quotations for materials, equipment, and supplies shall be documented.

6) When applicable, and if FTA so requests, the proposed procurement shall be submitted to FTA for pre-award review.

Section 19. BID/PROPOSAL EVALUATION

- (a) **General.** Proposals or bids shall be unconditionally accepted without alteration or correction, except as authorized in this policy. Submissions shall be evaluated based on the requirements set forth in the RFP or IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, suitability for a particular purpose, and pre-award survey of the bidder's/proposer's facilities. Those criteria that will affect the price and will be considered in evaluation for award as determined by County shall be objectively measurable, including, but not limited to discounts, sales tax, transportation costs, installation costs, and total project or life cycle costs. The County may not modify its evaluation factors after proposals are received. At the County's discretion, incomplete or nonresponsive proposals may be returned to the offeror.
- (b) **RFP Opening.** Except where prohibited by state law, proposals shall be reviewed by an evaluation committee regarding all evaluative factors maintained throughout the review process. The evaluation committee will grade all factors, with their consensus recorded on the proposal tabulation worksheet.
- (c) **Verbal interviews** with any offeror who has submitted a proposal may be made at the discretion of the County to determine such offeror's qualifications for further consideration.
- (d) A committee may be selected to conduct the **technical evaluation of the proposals** received and shall make a recommendation for contract award to the Board of Commissioners based upon each of the evaluation elements in accordance with the weighted importance of each criteria and other elements having a bearing on the decision to award the contract as stated in the RFP or IFB. The relative positions and evaluation points are totaled for each evaluation criteria or element, and the proposer with the highest overall total of evaluation points shall be recommended for contract award.
- (e) If the **County contracts for evaluation services or includes non-County personnel in the evaluation process**, the procurement standards of this Policy will apply to those contractors or Evaluation Committee members selected to perform evaluation functions on behalf of County.
- (f) The **County may reject any or all bids or proposals**, including the bid or proposal of an offeror whose performance under a previous contract, even though finally accepted by County

or another public agency, imposed additional costs and burdens upon the public in obtaining satisfactory performance.

(g) **Options.** In awarding any contract that will include options, the following standards apply:

- 1) The County may make the award based on the price of the base bid or the base bid plus options. The basis for the award determination will be identified in the RFP.
- 2) For options to be awarded, FTA requires that they be examined at the time of the award and a basis for price be established or the exercise of future options. Option prices cannot be negotiated at the time of exercise of the option.

Section 20. CONTRACT AWARD

(a) Except as provided in subsection (b) of this Section, the contract award shall be made to the lowest responsive bidder or offeror.

(b) **Award to Other than Lowest Bidder or Offeror.** If authorized in federal and state law, a contract may be awarded to other than the lowest bidder when either of the following circumstances exist:

- 1) The award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs, or
- 2) When the County states in the evaluation factors of its RFP or IFB that it may award the contract to other than the offeror whose proposal is lowest.

In both cases, the right to award the contract to other than the low bidder or offeror must be stated in the RFP or IFB.

(c) **Award Only to a Responsible Contractor.** Contract awards may only be made to "responsible" contractors under the standards of 49 U.S.C. § 5325, possessing the ability, willingness and integrity to perform successfully under the terms and conditions of the contract. The prospective contractor must at a minimum satisfy the following criteria to demonstrate its qualifications as a "responsible" contractor:

- 1) Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. § 5325G)(2)(A).

- 2) Debarment and Suspension. Is neither debarred nor suspended from Federal programs under DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter I, Part 9.4.
- 3) Affirmative Action and DBE. Is in compliance with the Common Grant Rules' affirmative action and FTA's Disadvantaged Business Enterprise requirements.
- 4) Public Policy. Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § 5325(j)(2)(B).
- 5) Administrative and Technical capacity. Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. § 5325(j)(2)(D).
- 6) Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations.
- 7) Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- 8) Production and Capability. Has, or can obtain, the necessary production, construction and technical equipment and facilities.
- 9) Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- 10) Performance Record. The contractor is able to provide a:
 - a. Satisfactory current performance record, and
 - b. Satisfactory past performance record in view of its records of long-term performance or performance with a predecessor entity, including:
 1. Key personnel with adequate experience and a parent firm with adequate experience and past performance.
 2. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient's solicitation.

3. A prospective contractor that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless it is determined that the circumstances were properly beyond the prospective contractor's control.
4. Such other information as may be secured having a bearing on the decision to award the contract.

(d) The contract award will be made by the Board of Commissioners.

Section 21. BID/PROPOSAL CORRECTION

(a) No changes in price or other provisions of proposals or bids after opening shall be permitted unless an error is obvious. An obvious error is one that can be clearly established from mathematical extension or tabulation shown in the bid documents submitted with the bid. An error in a mathematical extension, reported by a bidder but not shown in the bid documents, does not constitute an obvious error. Bidders are presumed to submit correct tabulations and specifications.

(b) Minor informalities and irregularities in a bid or proposal may be waived by County.

Section 22. BID/PROPOSAL PROTEST PROCEDURES

(a) Bidders or offerors wishing to protest the legitimacy of any type of procurement action must submit their pre-award Notice of Protest in writing no less than eight (8) calendar days before the bid opening/proposal due date. Persons wishing to protest a contract award must submit their Notice of Protest in writing no less than seven (7) calendar days after the Award of Contract.

(b) When Federal funds are involved, the FTA must be notified when the County receives a third party contract protest, and the County must keep FTA informed about the status of the protest.

(c) The Notice of Protest will be handled as follows:

- 1) The Notice of Protest shall be mailed, sent electronically, sent via facsimile, or delivered to the Board of Commissioners and shall state all issues and facts applicable to the protest. Issues and facts not stated in the Notice of Protest will not be considered.

2) A meeting(s) may be called following receipt of the protest that will include representatives from the County and the protestor to discuss the issue related to the protest. The meeting may be conducted by telephone conference, and must comply with the open public meeting laws.

3) The Board of Commissioners will make their decision according to the following time schedule and the County will notify the protestor of the decision in writing by regular mail, electronically, or by facsimile transmission.

a. Pre-award protests will be decided at least seven (7) days before the bid opening/proposal due date.

b. Contract award protests will be decided within seven (7) days following receipt of the protest.

4) The Board of Commissioners may, at their sole discretion, extend the limits of time outlined above.

5) The decision of the Board of Commissioners shall be final. For FTA funded procurements, any appeal of the Board of Commissioners' decision will be governed by FTA Circular C4220.1F or its successors. Judicial review of the Board of Commissioners' decision shall be governed by Rule 84 of the Idaho Rules of Civil Procedure, or successor thereto.

6) Failure of the protestor to specify their objections in writing and in accordance with the specified time deadlines shall constitute a waiver of all right to protest.

(d) This protest procedure shall be made known to all prospective bidders or proposers by being included or referenced in the requirements section of all solicitation documents.

(e) All communications with the parties involved, including County staff or board members concerning a protest, shall be in writing, and will be open for public inspection. The County shall be responsible for compiling and maintaining the written protest record.

(f) FTA may entertain a protest that alleges the County has failed to have or follow written protest procedures, or a protest involving issues important to FTA's overall public transportation program. Such protest must be filed with FTA not later than five (5) working days after the Board of Commissioners have rendered their final decision or five (5) working

days after the protestor knows or has reason to know that the Board of Commissioners have failed to render their final decision. Such protest to FTA must be filed in accordance with Chapter VII(l)(b) of the FTA Circular or its successors.

(g) When a protest has been timely filed with the County before award, the County shall not make an award for seven (7) days after the resolution of the protest, or if a protest has been filed with FTA during the pendency of that protest, unless the County determines that:

- 1) The goods or services to be procured are urgently required;
- 2) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- 3) Failure to make prompt award will otherwise cause undue harm to the County.

In the event that the County determines that the award is to be made during the seven-day period following the local protest decision or the pendency of a protest, County shall notify FTA prior to making such award. FTA will not review the sufficiency of County's determination to award during the pendency of a protest prior to FTA's bid protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

Section 23. CONTRACT CHANGES AND MODIFICATIONS

- (a) **Approval Requirements.** The County must have cost justifications supporting each change order it may issue.
- (b) **Cost Restrictions.** The cost of any change, modification, change order, or constructive change to a current contract must be allowable, allocable, within the scope of any applicable FTA grant or cooperative agreement, and reasonable for the completion of the project scope.
- (c) The **Board of Commissioners approval shall be required for all amendments to contracts** that change the existing contractual amount over the approved project scope.

Section 24. FEDERAL ASSISTANCE IN CONTRACT DISPUTES

If the County intends to request FTA's permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or intends to request increased Federal assistance for that purpose, the County must comply with the requirements pertaining to

notification of FTA, documentation, audit and other requirements set forth in Chapter VII(3) of the FTA Circular.

Section 25. CLAIMS AND LITIGATION INVOLVING FEDERALLY FUNDED CONTRACTS

The County shall comply with the requirements set forth in Chapter VII(4) of the FTA Circular pertaining to claims and litigation involving Federally funded third party contracts that:

- 1) Have a value exceeding \$100,000;
- 2) Involve a controversial matter, irrespective of amount; or
- 3) Involve a highly publicized matter, irrespective of amount.

Section 26. FTA PARTICIPATION IN SETTLEMENTS, ARBITRATION AWARDS, AND COURT AWARDS

When the County incurs costs due to binding arbitration or court decision, the County must secure FTA review and written concurrence in a proposed final settlement involving a dispute, claim, or litigation, and comply with the other requirements of Chapter VII(5) of the FTA Circular before using Federal assistance to support its costs, if one of the following circumstances is present:

- 1) When the settlement exceeds \$100,000.
- 2) When the approved project lacks sufficient funds to cover the County's settlement costs.
- 3) When a special Federal interest or Federal concern is declared due to program management concerns, possible mismanagement, impropriety, waste or fraud.

Section 27. BONDING POLICY

Unless FTA determines that other arrangements adequately protect the Federal interest for all construction contracts, the following minimum bonding requirements shall be met with each procurement:

- 1) Each bidder must provide a bid guarantee equivalent to 5 percent of its bid price and 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.

2) A performance bond for 100 percent of the total contract price shall be received from the successful contractor prior to contract award.

3) A payment bond on the part of the contractor for 100 percent of the total contract price shall be received from the successful contractor prior to contract award.

Section 28. DISPOSITION OF SURPLUS LAND, FACILITIES, EQUIPMENT, AND MATERIALS

(a) The Transit Administrator will be responsible for the disposition of all surplus facilities, equipment and properties and shall make recommendations to the Board as to the facilities, equipment or properties to be disposed and the best method of disposal that will yield the highest net return and comply with state and federal requirements.

(b) The disposal of items with a fair market value of \$5,000 or more will require reimbursement to FTA of the Federal interest in accordance with applicable federal regulations for the disposal of Federally funded equipment, facilities, and properties.

Section 29. PURCHASE RECORD MAINTENANCE

The Transit and Finance Departments shall maintain records sufficient to detail project performance and financial records for five years after the County has made final payment and all other pending matters are closed. The County must also maintain records sufficient to detail the significant history of a procurement, including but not limited to the following:

- 1) The rationale for the method of procurement.
- 2) The selection of contract type and evaluation criteria.
- 3) Contractor selection or rejection, and rationale.
- 4) The basis for the contract price.
- 5) The bid tabulation or proposal evaluation worksheet.

Section 30. STATE, FEDERAL, AND INTERGOVERNMENTAL AGREEMENTS

The Board of Commissioners is authorized to enter into intergovernmental purchase agreements between the County and the state and other political subdivisions, or public or nonprofit organizations whose membership consists of such entities. Such purchase agreements shall comprise a valid method of transacting procurements only if all

aforementioned procurement standards and requirements are adhered to. Public notice advertising requirements shall be deemed met by the advertising of the state or other political subdivision.

Section 31. CONTRACT PROVISIONS

Third-party contracts shall contain provisions required by the FTA Circular and applicable State, Federal and local laws. Each third-party contractor must extend those provisions to its subcontractors to the extent required by applicable laws and regulations. In all cases, the documents in the Appendices are referenced as they are or as may be amended.

Kootenai County Transit Procurement Policy Appendices

**Effective 6 December 2011
Amended 9 September 2014**

APPENDIX A – MANDATORY PROCUREMENT STANDARDS WORKSHEET

APPENDIX B – PROCUREMENT PRICE GUIDE

APPENDIX C – THIRD PARTY CONTRACTING CHECKLISTS

APPENDIX D – THIRD PARTY CONTRACTING PROVISIONS

APPENDIX E – FEDERALLY REQUIRED CLAUSES AND OTHER MODEL CLAUSES

APPENDIX F – FORMS

APPENDIX G – KOOTENAI COUNTY RESOLUTION 2014 -62

APPENDIX H – 2014 FTA CERTIFICATIONS AND ASSURANCES