

Request for Board of Commissioners' Action

From: County Administrator, Faye Hughes Date: April 23, 2018

Subject: FTA Procurement Policy- 5311 Transit Item Number: VIII-A

Attached is the Procurement Policy that FTA has required that all sub recipients adopt in order to be in compliance with the county's use of FTA and GDOT 5311 Rural Transportation grant funds. This is a model policy with our county and transit system inserted. Below is an explanation of the policy and what purchases the policy applies to.

(Excerpt from the Policy)

Relationship to Other Cook County Policies

The purpose of the County purchasing policies and procedures are two-fold. First, the County has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the County's use of FTA and GDOT funds. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain only to the County's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit may follow alternative procedures.

If the board agrees, the Chairman will need a motion to adopt the Procurement Policy that applies to the 5311 Rural Transportation Grant funds.

Motion made by _____

Second made by _____

Any discussion: _____

Votes _____ yes _____ no

Motion carried/ failed

**COOK COUNTY
D/B/A
COOK COUNTY TRANSIT**

PROCUREMENT POLICY

**Adopted
May 7, 2018**

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1. INTRODUCTION

1.1. Purpose

This manual establishes guidelines and minimum standards Cook County Transit that will use in the management of its third party contracts. This policy is intended to ensure that Cook County Transit complies with Federal Transit Administration (FTA) and the Georgia Department of Transportation's (GDOT's) standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of Cook County Transit is to ensure maximum open and free competition consistent with:

- FTA Circular 4220.1F "Third Party Contracting Guidance" or latest version thereof;
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (referred to now as the "Super Circular" and which replaced and consolidated OMB Circulars A-87, A-102, A-110, A-122, and A-133) ;
- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 1201, which replaces 49 CFR parts 18 and 19;
- GDOT Section 5311 State Management Plan; and
- GDOT Section 5311 Program Manual.

1.2. Applicability

This policy applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to Cook County Transit to support **open market procurements**. An open market solicitation is used to purchase a good or service by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts;
- Real Estate Contracts; and
- Intergovernmental Agreements.

The goal of procurement practices is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. Cook County Transit will avoid the following situations considered to be restrictive of competition:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Cook County Transit will conduct procurements in a manner that does not give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt Georgia licensing laws from being considered in those disciplines that are regulated by the State of Georgia. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

1.3. Third Party Contracting Capacity

The provisions of “Super Circular” and the most current version of FTA Circular 4220 requires Cook County Transit to have written procurement procedures requires written procurement procedures as a condition of self-certification. This policy is designed to meet FTA and GDOT’s requirements in this regard.

1.4. Relationship to Other Cook County Policies

The purpose of the County purchasing policies and procedures are two-fold. First, the County has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the County's use of FTA and GDOT funds. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain only to the County’s purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit may follow alternative procedures.

These policies may not answer all questions related to purchasing; if any employee of COOK COUNTY TRANSIT has a question regarding these procedures, GDOT should be contacted for clarification and guidance.

When Cook County Transit undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the County When any conflict exists between this policy and the existing policies of the County, the procedures outlined herein shall prevail. If any employee of Cook County Transit determines that a conflict exists between these policies and state and local law, Cook County Transit shall contact GDOT and communicate the conflict.

2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

2.1. Purpose

The “Super Circular” requires each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal Conflicts of Interest
- Gifts; and
- Violations.

2.2. Definition of Key Terms

As used herein, the following definitions apply:

Conflict of Interest – A situation in which an existing employee, or an employee who has been, or will be, offered employment, board member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between an employee’s private interests and his or her professional obligations to the Cook County Transit such that an independent observer might reasonably question whether the employee’s professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

Financial Interest – An officer, agent, Board Member, his or her partner, employee or their immediate family, is considered as having a financial interest in a company if: they receive more than \$10,000 in consulting income, salaries, or equity in the company; they have more than 5 percent equity in the company; they have intellectual property rights in or receive royalties from the company; or they serve as a director, officer, partner, trustee, manager or employee of the company.

Immediate Family – Immediate family includes an employee’s spouse, grandparent, parent, brother, sister, child or grandchild, his or her partner.

2.3. Applicability

No employee, elected official, agent, or other individual under an employment contract with the County or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of those previously listed individuals has a financial or other interest in the firm selected for award.

2.4. Gifts

Any contractor, subcontractor, or supplier who has a contract with a governmental agency; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or to providing favors to any individual defined in Section 2.2. Who is charged with the duty of:

- Preparing plans, specifications, or estimates for public contract; or
- Awarding or administering public contracts; or
- Inspecting or supervising construction.

The Cook County Transit also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.

2.5. Employee Conflicts of Interest

2.5.1. Conflicts of Interest

It shall be a breach of ethical standards for any Cook County Transit employee to participate directly or indirectly in a procurement when the employee knows:

- The employee (or prospective employee that an offer of employment is anticipated or has been made) or any member of the employee's immediate family, board members, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

2.5.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the County Administrator and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the County Administrator an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the County Administrator to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

2.5.3. Employee Disclosure Requirements

A Cook County Transit employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a Cook County Transit employee or by the official acts or actions of Cook County Transit, shall disclose the precise nature and value of such interest in a written disclosure statement to the County Administrator. The employee's disclosure statement will be reviewed by the County Administrator and the County Administrator will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the County Administrator has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a Cook County Transit employee or by the official acts or actions of Cook County Transit he/she shall disclose the precise nature and value of such interest in a written disclosure statement to the County Administrator.

2.5.4. Confidential Information

A Cook County Transit employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with Cook County Transit

2.5.5. Solicitation Provision

Cook County Transit shall insert the following provisions in all formal competitive solicitation documents for products and services:

Cook County has moved to adopt the policies contained in the Georgia Procurement Manual Code of Ethics, (1.4.4. These policies shall apply to Cook County Transit employees involved in procurement. It is a breach of ethical standards for any Cook County Transit employee to participate directly or indirectly in a procurement when the employee knows:

- *The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;*
- *A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or*
- *Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.*

In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of any evaluation committee, Cook County employees or other governing board members other than the designated procurement officer."

2.6. Organizational Conflicts of Interest

The procurement officer and technical personnel are encouraged to work closely with the county attorney to review all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to the county;
- A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. Cook County Transit and Cook County local government will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

3. PROCEDURES FOR OPEN MARKET PROCUREMENTS

3.1. Methods of Procurement

Cook County Transit shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Georgia and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients.

3.1.1. Micro-Purchases

3.1.1.1. Definition

Micro-purchases are those purchases of products and services that cost less than \$3,000.

3.1.1.2. Approval Authority

Micro-purchases must be approved in writing by one of the following Cook County Transit employees:

- County Board Chairman; or
- County Administrator

3.1.1.3. Competition

Cook County Transit may acquire products and services valued at less than \$3,000 without obtaining competitive quotations, but must be approved in writing by GDOT. Micro-purchases should be distributed equitably among qualified suppliers.

Micro purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures.

3.1.1.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the micro purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms and women's business enterprises in Cook County Transit's Federally-assisted procurements.

3.1.1.5. Documentation

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made.

3.1.2. Small Purchases

3.1.2.1. Definition

FTA defines small purchases are those purchases of products and services, including construction services, that cost greater than \$3,000 but not more than \$150,000.

3.1.2.2. Approval Authority

Small purchases must be approved in writing by GDOT and one of the following Cook County Transit employees:

- County Board Chairman ; and/or
- County Administrator.

3.1.2.3. Required Competition

Price or rate quotations must be obtained from an adequate number of qualified sources. It is the responsibility of Cook County Transit to ensure that an adequate number of quotations, bids, or proposals are received

3.1.2.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBE, small and minority firms and women's business enterprises in Cook County Transit's Federally-assisted procurements

3.1.2.5. Documentation

Every small purchase must be documented in the grantee's written procurement history file. The level of documentation is stipulated in Section 6.6.1.

For small purchases, price quotations may be oral or written.

3.1.2.6. Special Considerations

Cook County Transit may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement.

Small purchases are exempt from FTA's Buy America requirements.

Cook County Transit reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the County Administrator believes it is in the best interests of the County to do so.

3.1.3. Formal Purchases

3.1.3.1. Definition

Large purchases are those purchases of products and services that cost greater the Federal threshold of \$150,000.

3.1.3.2. Approval Authority

Large purchases must be approved in writing by GDOT and the following Cook County Transit employees or officials:

- County Board Chairman or
- County Administrator.

No further delegation of approval authority for large purchases may be made.

3.1.3.3. Procurement Methods

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method; and
- Competitive Proposal method.

3.1.3.4. Required Competition

Formal bids and competitive proposals must be publicly advertised.

For large purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.

For large purchases by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal.

3.1.3.5. Required Documentation

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

3.1.3.6. Special Considerations

Cook County Transit may acquire products and services via QPA in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement.

3.1.3.7. Procedural Methods for Sealed Bids

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract 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. The vehicle through which bids are solicited is an Invitation for Bids (IFB). The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

- (a) When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services that, including construction services, cost greater than \$100,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:

- (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
 - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
 - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.
 - (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
 - (5) 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.
- (b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
- (1) Publicity – The Invitation for Bids must be publicly advertised.
 - i. The County Administrator shall ensure that sufficient time is allowed to prepare bids before the date of bid opening.
 - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
 - a. Direct notice, based on compiled vendor lists or from pre-qualification list, sent to prospective offerors; or
 - b. Use of advertisement by electronic means.
 - (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
 - (3) Adequate Specifications – The Invitation for Bids, 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) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
 - (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
 - (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
 - (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

3.1.3.8. Competitive Proposals

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to Cook County Transit or that is considered to be the “best value” to Cook County Transit. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.

- (a) When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$90,000 when the nature of the procurement does not lend itself to sealed bidding and Cook County Transit expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement may not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:
 - (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
 - (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
 - (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
 - (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.

- (b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:
 - (1) Publicity – The Request for Proposals must be publicly advertised.
 - (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
 - (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
 - (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

- (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to «Dba_Name» or that represents the “best value” to Cook County Transit with price and other factors considered.
- (6) Best Value – Cook County Transit may award a contract to the offeror whose proposal provides the greatest value to Cook County Transit To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. Cook County Transit must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

3.1.3.9. Two-Step Procurements

Cook County Transit may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to Cook County Transit's request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors.

3.2. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by Cook County Transit.

General

When evaluating bids or proposals received in response to a solicitation, Cook County Transit shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents Cook County Transit may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

3.2.1. Options

The following standards shall apply when awarding contracts that include options:

3.2.1.1. Evaluation Required

In general, Cook County Transit must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

3.2.1.2. Evaluation Not Required

Cook County Transit need not evaluate bids or offers for any option quantities when Cook County Transit does not intend to exercise those options after the contract is awarded or if it determines that evaluation would not otherwise be in its best interests.

3.2.1.3. Evaluators

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the recipient determines would be necessary or helpful. If Cook County Transit lacks qualified personnel within its organization, it may contract for evaluation services. If it does so, the procurement procedures in this policy will apply to those contracts and to those contractors selected to perform evaluation functions on behalf of the recipient.

3.3. Contract Award Requirements

The following standards shall apply to all contract award decisions made by Cook County Transit:

3.3.1. Award to Other Than the Lowest Bidder or Offeror

Cook County Transit may award a contract to other than the lowest bidder if 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. Cook County Transit may also award a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, Cook County Transit must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

3.3.1.1. Award Only to a Responsible Bidder or Offeror

Cook County Transit may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Cook County Transit must consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. Cook County Transit must also ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by Cook County Transit. For every procurement action above the micro-purchase level, Cook County Transit must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file.

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, Cook County Transit, at a minimum, must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- (a) Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (b) 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 1, Part 9.4.
- (c) Affirmative Action and DBE – Is in compliance with the Super Circular’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (d) Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § Section 5325(j)(2)(B).
- (e) 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. Section 5325(j)(2)(D).
- (f) Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- (g) 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).

- (h) Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (i) Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (j) Performance Record – Is able to provide a:
 - (1) Current Performance – Satisfactory current performance record; and
 - (2) Past Performance – Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
 - i. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
 - ii. Adequate Past Experience. 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, and
 - iii. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror’s control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. GDOT expects Cook County Transit to consider the number of the bidder or offeror’s contracts involved and the extent of deficient performance in each contract when making this determination.

3.3.1.2. Rejection of Bids and Proposals

Cook County Transit may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. Cook County Transit must include a statement in its solicitation document reserving the right to reject all bids or proposals.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor’s wholly owned affiliates to perform other work in connection with the project.

3.4. Independent Cost Estimate and Cost and Price Analysis

3.4.1. Independent Cost Estimate

For every procurement, Cook County Transit shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.

3.4.2. Cost or Price Analysis

Cook County Transit shall perform a cost or price analysis in connection with every procurement action above the Federal small acquisition threshold, including contract modifications.

3.4.2.1. Price Analysis

If Cook County Transit determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

3.4.2.2. Cost Analysis

Cook County Transit must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

3.4.3. Approval of Contracts

All contracts must be signed by the County Board Chairman.

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4. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS

4.1. Cook County Transit Staff Responsibilities

Prior to execution of third party contracts, Cook County Transit shall designate a Project Manager to serve as Cook County Transit's principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

4.2. Administrative Restrictions on the Acquisition of Property and Services

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third party procurements.

4.2.1. Legal Eligibility

The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.

4.2.2. Scope of the Project

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

4.2.3. Period of Performance

Cook County Transit will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

4.2.3.1. General Standards

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. Cook County Transit will also consider competition, pricing, fairness, and public perception. Cook County Transit's procurement files will document its rationale for determining the performance period designated for each contract.

4.2.3.2. FTA Restrictions on Contract Period of Performance

Cook County Transit' third party contracts (such as property, services, leases, construction, revenue, and so forth) are limited to a maximum period of performance of five (5) years, consistent with FTA Circular 4220.1F.

4.2.3.3. Time Extensions

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once Cook County Transit awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

4.2.3.4. Authority to Extend

The County Board Chairman has the sole authority to approve and execute contract modifications. The Project Manager for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Project Manager shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

4.3. Federal Cost Principles

Applicable provisions of 2 CFR Part 200.400 require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

4.4. Payment Provisions

Cook County Transit will follow the provisions of this section when using FTA funds (or the proposed local share) to support its third party contracts.

4.4.1. GDOT Support for the Project

GDOT manages all FTA programs on a cost reimbursement basis; costs may only be incurred by Cook County Transit if GDOT has awarded a financial assistance contract to Cook County Transit.

4.4.1.1. Progress Payments

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

4.4.1.2. Adequate Documentation

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

4.4.1.3. Percentage of Completion Method

Applicable provisions of 4220.1F requires that any progress payments for construction contracts be made on a percentage of completion method described therein. Cook County Transit, however, may not make progress payments for other than construction contracts based on this percentage method.

4.5. Protections Against Performance Difficulties

Cook County Transit shall include provisions in its third party contracts that will reduce potential problems that might occur during contract performance, as follows:

4.5.1. Changes

Cook County Transit shall include provisions that address changes and changed conditions in all third party contracts except for routine supply contracts.

4.5.2. Remedies

Cook County Transit shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

4.5.2.1. Violation or Breach

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

4.5.2.2. Suspension of Work

Cook County Transit may include provisions pertaining to suspension of work in its third party contracts.

4.5.2.3. Termination

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

4.6. Contents of Complete Contract Files

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

4.6.1. Written Record of Procurement History

Cook County Transit shall maintain written records detailing the history of the procurement, including records relating to:

4.6.1.1. Procurement Method

Cook County Transit must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.

4.6.1.2. Contract Type

Cook County Transit must state the reasons for selecting the contract type it used.

4.6.1.3. Contractor Selection

Cook County Transit must state its reasons for contractor selection or rejection, including written justification and evaluation documents;

4.6.1.4. Contractor Responsibility

Cook County Transit must provide a written determination of responsibility for the successful contractor;

4.6.1.5. Cost or Price

Cook County Transit must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis; and

4.6.1.6. Reasonable Documentation

Cook County Transit must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation and execution.

4.7. Access to Records

Apart from the more limited record access provisions, of 2 CFR Part 200 provides FTA and DOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

4.8. Contract Administration and Close-Out Documents

Cook County Transit shall maintain written records detailing the performance and close-out of the contract, including records relating to:

4.8.1. Contractor Performance

Cook County Transit must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions.

4.8.2. Contract Deliverables

Cook County Transit must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

4.8.3. Contract Changes

Cook County Transit of need, written justification and rationale, cost analysis, negotiation and execution.

4.8.4. Contract Payments

Cook County Transit must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

4.8.5. Contract Close-Out

Cook County Transit must retain documentation related to contractor performance and evaluation, approval of final deliverables payments, contract audit and final reconciliation.

4.9. Protest Procedures

4.9.1. Statement of Policy

Cook County Transit is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.

In general, GDOT will not substitute its judgment for that of Cook County Transit unless the matter is primarily a Federal concern. Nevertheless, GDOT and FTA can become involved in Cook County Transit's administrative decisions when a Cook County Transit protest decision is appealed to GDOT.

Cook County Transit shall give timely notification to GDOT when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. Cook County Transit shall disclose all information about any third party procurement protest to GDOT upon request.

Cook County Transit's procedure for addressing third party procurement protests is described in Paragraph 6.9.2 below. Cook County Transit shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$100,000 or greater.

4.9.2. Cook County Transit Staff Responsibilities

The following staff responsibilities shall be assigned in all protests:

- County Administrator– Responsibilities include: ensuring that the Cook County Transit Protest Procedure is included in all solicitation documents; and providing information to and assisting the Chairman and County Attorney with the resolution of protests.
- County Attorney– Responsibilities include: reviewing all procurement protests; and advising and assisting the Cook County Transit as needed with the resolution of all procurement protests.

4.9.3. Solicitation Provision

Cook County Transit shall insert the following provision in all solicitation documents:

4.9.3.1. Pre-Proposal Protests

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the County Administrator as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The County Administrator may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the County Administrator as the

result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the County Administrator shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

4.9.3.2. Pre-Award Protests

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Cook County Transit protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Cook County Transit's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the County Administrator as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by Cook County Transit.

The County Administrator may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that Cook County Transit shall announce the contract award.

The decision by the County Administrator shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by FTA as specified below.

4.9.4. Requirements for Protests

All protests must be submitted to Cook County Transit in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Cook County Transit

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the County Administrator at the address shown in the solicitation documents.

4.9.5. Protest Response

The County Administrator shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Cook County Transit will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official Cook County Transit response to the protest and Cook County Transit will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

4.9.6. Review of Protests by GDOT

All protests involving contracts financed with Federal assistance shall be disclosed to GDOT. Protesters shall exhaust all administrative remedies with Cook County Transit prior to pursuing protests with GDOT. GDOT limits its reviews of protests to: a grantee’s failure to have or follow its protest procedures; a grantee’s failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation.

Appeals to GDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of Cook County Transit’s final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to GDOT.

This Procurement Policy has been duly accepted and approved on this day, 7th of May, 2018 by the Chairman for the Cook County Board of Commissioners, as evidenced by the signature(s) below.

APPROVED:

Debra Robinson

Type Name and Title

May 7, 2018

Signature

Date

Faye Hughes, County Administrator

Type Name and Title

May 7, 2018

Signature

Date