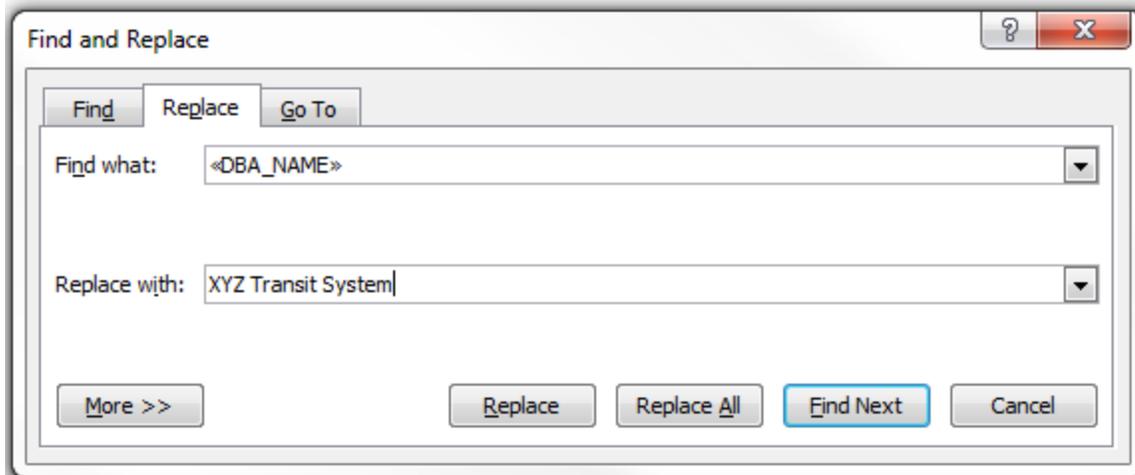


Instructions for Customizing the INDOT Model PROCUREMENT POLICIES AND PROCEDURES MANUAL

Procurements using Federal and State transit funding are subject to a variety of State and Federal requirements that, while not difficult to implement, can pose challenging to ensure that all aspects of State and Federal compliance are met. The Indiana Department of Transportation, Office of Transit has prepared this model Procurement Policies and Procedures Manual to assist its Section 5311 subrecipients in achieving compliance in any procurements using Section 5311 funding. This model manual incorporates all necessary State and Federal procurement requirements and also allows subrecipients to customize it to reflect any pertinent local restrictions. Please note, however, that any local exceptions or requirements should first be reviewed by INDOT to ensure that they do not conflict with any State and/or Federal requirements. For example, some local entities include “local preference” in procurements. This is not permitted using Federal funds.

Instructions

1. Open the model manual document and re-save it with your system’s name in the title and the date.
2. Click on “Enable Content,” if applicable, at the top of the page.
3. On the cover page, click on «**GRANTEE_NAME**», highlight it, and type in your grantee name. Do this for «**DBA_NAME**», to insert your system, logo, to add the date, etc.
 - a. The «**GRANTEE_NAME**» is the entity with whom INDOT has the Section 5311 contract, or the pass-thru agency, whichever party is actually providing the service and is conducting the procurement.
 - b. The «**DBA_NAME**» is the operating name of the transit system.
 - c. The date of the document is the effective date, month and year, not the date you begin development.
 - d. As you update this policy, you will add the revision date to this page.
4. A quick way to insert your transit’s name throughout the document is to use search and replace. To begin, highlight and copy «**DBA_NAME**», **click on find**, and paste it into that field. Type in your system’s name in replace and continue to find and replace throughout the document. You can do this on all fields that require inserted data. See example below:



Continue on with the remaining fields as described in the following instructions.

5. «**Entity_Type**» refers to the grantee and will be either city, county, private nonprofit, regional transit authority, etc.
6. «**Official1**» is the individual responsible for the overall procurement process, e.g., the procurement manager, service director, fiscal officer, etc. In almost all cases this will be the same person as described in #7 below, EXCEPT if this individual is the one with the conflict. In that case, you will need to name another person that would oversee the process in those situations.
7. «**Procurement Officer**» is the individual (e.g., purchasing agent) responsible for overseeing all aspects of the procurement process, and addressing any issues that may arise including potential conflicts of interest protests.
8. «**Legal Counsel**» is the individual responsible for any legal matters pertaining to the procurement, including but not limited to reviewing all procurement protests and advising as needed in the resolution of said protests.
9. «**Micro_Purchase**» - insert the threshold that defines a micro purchase.
10. «**Micro_Approval1**» and «**Micro_Approval2**» - Identify the two individuals responsible for approving micro purchases.
11. «**Small_Threshold**» - Insert the upper threshold that defines a small purchase.
12. «**Small_Approval1**» and «**Small_Approval2**» – Identify the two individuals authorized to approval small purchases.
13. «**Formal_Threshold**» - Insert the threshold amount that defines a small purchase or use the or the Federal threshold of \$100,000.
14. «**Formal_Approval1**» and «**Formal_Approval2**» - Identify the two individuals authorized to approve formal purchases.
15. Once all fields have been replaced, click on 'references' at the top, then click on Update Table.

**«GRANTEE_NAME»
«DBA_NAME»
DRAFT PROCUREMENT MANUAL**

<Logo>

«Policy_Date»

Table of Contents

1.	INTRODUCTION.....	1
1.1.	Purpose	1
1.2.	Applicability.....	1
1.3.	Third Party Contracting Capacity	2
1.4.	Relationship to Other «Entity_Type» Policies	2
2.	CODE OF ETHICS AND CONFLICT OF INTEREST POLICY.....	3
2.1.	Purpose	3
2.2.	Definition of Key Terms.....	3
2.3.	Applicability.....	3
2.4.	Gifts	4
2.5.	Employee Conflicts of Interest.....	4
2.5.1.	Conflicts of Interest.....	4
2.5.2.	Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver).....	4
2.5.3.	Employee Disclosure Requirements	5
2.5.4.	Confidential Information.....	5
2.5.5.	Solicitation Provision.....	5
2.6.	Organizational Conflicts of Interest	6
3.	«DBA_NAME» RESPONSIBILITIES UNDER FEDERAL LAW	7
3.1.	Third Party Contracting Capacity	7
3.1.1.	Contract Administration System	7
3.1.2.	Written Procurement Procedures	7
3.1.3.	Adequate Third Party Contract Provisions.....	8
3.1.4.	Industry Contracts.....	8
3.1.5.	Revenue Contracts	8
3.1.6.	Record Keeping	8
3.2.	Determination of Needs	9
3.2.1.	Eligibility	9
3.2.2.	Necessity	9
3.3.	Contractor Responsibilities	11
3.3.1.	Debarment and Suspension	11
3.3.2.	Lobbying Certification and Disclosure	12
3.3.3.	Federal Civil Rights Laws and Regulations	12
3.3.4.	Socio-Economic Development	13

3.3.5.	Sensitive Security Information	14
3.3.6.	Seat Belt Use	14
3.4.	Socio-Economic Requirements for the Acquisition of Property and Services	14
3.4.1.	Labor	14
3.4.2.	Civil Rights	15
3.4.3.	Environmental Protections	17
3.4.4.	Energy Conservation	18
3.4.5.	Preference for U.S. Property--Buy America	18
3.4.6.	Shipments of Property--U.S. Flag Requirements	18
3.4.7.	Project Travel--Use of U.S. Flag Air Carriers.....	18
3.5.	Technical Restrictions on the Acquisition of Property and Services.....	19
3.5.1.	Intelligent Transportation Systems (ITS).....	19
3.5.2.	Metric Measurements	Error! Bookmark not defined.
3.5.3.	Use of \$1 Coins.....	19
3.6.	Rolling Stock--Special Requirements	19
3.6.1.	Accessibility.....	19
3.6.2.	Transit Vehicle Manufacturer Compliance with DBE Requirements	19
3.6.3.	Minimum Service Life.....	19
3.6.4.	Spare Ratios	20
3.6.5.	Air Pollution and Fuel Economy	20
3.6.6.	Pre-award and Post Delivery Review	20
3.6.7.	Bus Testing	20
3.6.8.	In-State Dealers.....	20
3.6.9.	Basis for Contract Award	20
3.6.10.	Five-Year Limitation	20
3.7.	Public Transportation Services—Special Requirements	20
3.7.1.	Protections for Public Transportation Employees	21
3.7.2.	Drug and Alcohol Testing	21
3.7.3.	Accessibility.....	21
3.7.4.	Protection of Animals.....	21
3.7.5.	Charter Service Restrictions.....	21
3.7.6.	School Bus Restrictions	21
3.8.	Construction – Special Requirements.....	22
3.8.1.	Bonding	22
3.8.2.	Bid Guarantee	22

3.8.3.	Performance Bond	22
3.8.4.	Payment Bond.....	22
3.8.5.	Acceptable Sureties.....	23
3.8.6.	Reduced Bonding	23
3.8.7.	Excessive Bonding	23
3.8.8.	Seismic Safety	23
3.8.9.	Value Engineering	23
3.8.10.	Equal Employment Opportunity	23
3.8.11.	Prevailing Wages.....	23
3.8.12.	Anti-Kickback.....	24
3.8.13.	Construction Safety.....	24
3.8.14.	Labor Neutrality	24
3.8.15.	Preference for U.S. Property—Buy America.....	24
3.8.16.	Accessibility.....	25
4.	SOURCES OF ACQUISITIONS.....	26
4.1.	Force Account	26
4.2.	Joint Procurements	26
4.3.	State or Local Government Purchasing Schedules or Purchasing Contracts.....	26
4.3.1.	Definition.....	26
4.3.2.	Applicability of Federal Provisions	27
4.3.3.	Federal Supply Schedules.....	27
4.3.4.	Existing Contracts.....	27
4.4.	The Open Market	29
5.	PROCEDURES FOR OPEN MARKET PROCUREMENTS.....	30
5.1.	Solicitation of Competitive Price Quotes, Bids or Proposals	30
5.2.	Receipt and Evaluation of Unsolicited Proposals.....	30
5.3.	Prequalification	30
5.4.	Solicitation Requirements and Restrictions.....	31
5.4.1.	Description of the Property or Services.....	31
5.4.2.	Evaluation Factors.....	32
5.4.3.	Permissible Contract Types.....	32
5.4.4.	Prohibitive or Restricted Contract Types	33
5.4.5.	Other Federal Requirements Affecting the Property or Services to be Acquired	33
5.4.6.	Other Federal Requirements Affecting the Bidder or Offeror and the Contractor	33
5.4.7.	Reservation of Right to Award to Other Than the Low Bidder or Offeror.....	33

5.4.8.	Reservation of Right to Reject All Bids or Offers	34
5.5.	Methods of Procurement	34
5.5.1.	Micro-Purchases	34
5.5.2.	Small Purchases.....	35
5.5.3.	Formal Purchases.....	36
5.6.	Procurement by Other Than Full and Open Competition.....	41
5.6.1.	When Appropriate	41
5.6.2.	Competition Adequacy	41
5.7.	Evaluation Requirements.....	43
5.7.1.	General.....	43
5.7.2.	Options.....	44
5.8.	Contract Award Requirements	44
5.8.1.	Award to Other Than the Lowest Bidder or Offeror.....	44
5.9.	Independent Cost Estimate and Cost and Price Analysis.....	46
5.9.1.	Independent Cost Estimate.....	46
5.9.2.	Cost or Price Analysis	46
5.9.3.	Approval of Contracts	47
6.	CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS	49
6.1.	«Dba_Name» Staff Responsibilities.....	49
6.2.	Administrative Restrictions on the Acquisition of Property and Services	49
6.2.1.	Legal Eligibility.....	49
6.2.2.	Scope of the Project.....	49
6.2.3.	Period of Performance.....	49
6.3.	Federal Cost Principles.....	50
6.4.	Payment Provisions.....	50
6.4.1.	INDOT Support for the Project.....	50
6.5.	Protections Against Performance Difficulties	51
6.5.1.	Changes.....	51
6.5.2.	Remedies.....	51
6.6.	Contents of Complete Contract Files	52
6.6.1.	Written Record of Procurement History.....	52
6.7.	Access to Records	53
6.8.	Contract Administration and Close-Out Documents	53
6.8.1.	Contractor Performance	53
6.8.2.	Contract Deliverables.....	53

6.8.3. Contract Changes 53
6.8.4. Contract Payments..... 54
6.8.5. Contract Close-Out..... 54
6.9. Protest Procedures 54
6.9.1. Statement of Policy 54
6.9.2. «Dba_Name» Staff Responsibilities 54
6.9.3. Solicitation Provision..... 55
6.9.4. Requirements for Protests..... 55
6.9.5. Protest Response 56
6.9.6. Review of Protests by INDOT 56

Appendices

1. INTRODUCTION

1.1. Purpose

This manual establishes guidelines and minimum standards that «Db_Name» will use in the management of its third party contracts. This policy is intended to ensure that «Db_Name» complies with Federal Transit Administration (FTA) and the Indiana Department of Transportation's (INDOT'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 «Db_Name» 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;
- INDOT Section 5311 State Management Plan; and
- INDOT 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 «Db_Name» 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. «Db_Name» 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.

«Dba_Name» 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 Indiana licensing laws from being considered in those disciplines that are regulated by the State of Indiana. 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 «Dba_Name» to have written procurement procedures requires written procurement procedures as a condition of self-certification. This policy is designed to meet FTA and INDOT’s requirements in this regard.

1.4. Relationship to Other «Entity_Type» Policies

The purpose of the «Entity_Type»'s purchasing policies and procedures are two-fold. First, the «Entity_Type» has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the «Entity_Type»'s use of FTA and INDOT 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 «Entity_Type»'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 «Dba_Name» has a question regarding these procedures, INDOT should be contacted for clarification and guidance.

When «Dba_Name» undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the «Entity_Type». When any conflict exists between this policy and the existing policies of the «Entity_Type», the procedures outlined herein shall prevail. If any employee of «Dba_Name» determines that a conflict exists between these policies and state and local law, «Dba_Name» shall contact INDOT 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 «Dba_Name» 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 «Grantee_Name», 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 «DbName» 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 «DbName» 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 «Official1»; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the «Official1» 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 «Official1» 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 «Dba_Name» 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 «Dba_Name» employee or by the official acts or actions of «Dba_Name», shall disclose the precise nature and value of such interest in a written disclosure statement to the «Official1». The employee's disclosure statement will be reviewed by the «Official1» and the «Official1» will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the «Official1» 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 «Dba_Name» employee or by the official acts or actions of «Dba_Name», he/she shall disclose the precise nature and value of such interest in a written disclosure statement to the «Official1».

2.5.4. Confidential Information

A «Dba_Name» 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 «DBA_Name».

2.5.5. Solicitation Provision

«Dba_Name» shall insert the following provisions in all formal competitive solicitation documents for products and services:

“«Grantee_Name» has moved to adopt the policies contained in the Indiana Code of Ethics, (42 IAC 1-1. These policies shall apply to «Dba_name» employees involved in procurement. It is a breach of ethical standards for any «Dba_name» 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, «Grantee_Name» 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 «Legal_Counsel» 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 «Entity_Type»;
- 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. «DBA_Name»«Entity_Type» will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

3. «DBA_NAME» RESPONSIBILITIES UNDER FEDERAL LAW

3.1. Third Party Contracting Capacity

«Dba_Name» must maintain adequate technical capacity to carry out its FTA assisted projects and comply with all applicable Federal requirements (2 CFR 200, FTA C 4220.1F, etc.) . «Dba_Name»'s third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements.

3.1.1. Contract Administration System

«Dba_Name» must maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements.

3.1.2. Written Procurement Procedures

«Dba_Name» must maintain and follow written procurement procedures that address:

- (a) Solicitations – Requirements for «Dba_Name» solicitations are addressed in Section 5.
- (b) Necessity – Requirements related to «Dba_Name»'s need for products or services are addressed in Section 3.2.2.
- (c) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement are addressed in Section 3.2.2
- (d) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 3.5.2.
- (e) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 3.4.3 and 3.4.4.
- (f) Procurement Methods – Descriptions of the procurement methods that «Dba_Name» may use are included in Section 5 below.
- (g) Legal Restrictions – Descriptions of Federal and State restrictions on «Dba_Name»'s acquisitions are included in Section 5.
- (h) Third Party Contract Provisions – Specific third party contract provisions required for each third party contract and flow down requirements to subcontracts are included in Section 3.1 through 3.7.
 - (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.

- (2) Resolution of Third Party Contracting Issues – Procedures related to the resolution of third party contracting issues are included in Section 6.8.

3.1.3. Adequate Third Party Contract Provisions

«Dba_Name» must include provisions in all of its third party contracts that are adequate to form a sound and complete agreement.

3.1.4. Industry Contracts

«Dba_Name» shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. «Dba_Name» shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to «Dba_Name».

3.1.5. Revenue Contracts

«Dba_Name» may enter into a revenue contract with a third party to generate revenues in connection with a transit related activity, or to create business opportunities utilizing and FTA funded asset. Any such said contract opportunity will follow a competitive selection procedures and principles outlined herein.

3.1.6. Record Keeping

«Dba_Name» must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. «Dba_Name» must maintain these records for five (5) years after «Dba_Name» and its subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- (a) Written Record of Procurement History – «Dba_Name» must maintain and make available to FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level «Dba_Name» must maintain records relating to:
- (1) Procurement Method – «Dba_Name» 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;
 - (2) Contract Type – «Dba_Name» must state the reasons for selecting the contract type it used;
 - (3) Contractor Selection – «Dba_Name» must state its reasons for contractor selection or rejection;
 - (4) Contractor Responsibility – «Dba_Name» must provide a written determination of responsibility for the successful contractor;
 - (5) Cost or Price – «Dba_Name» must evaluate and state its justification for the contract cost or price; and
 - (6) Reasonable Documentation – «Dba_Name» must retain documentation commensurate with the size and complexity of the procurement.

- (7) Vendor Verification – «Dba_Name» must include verification of acceptance with a selected vendor/supplier/manufacturer through the Federal System of Award Management (SAM) for each project and associated project file.
- (b) Access to Records – «Dba_Name» must provide FTA and INDOT 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.
- (c) Use of Technology/Electronic Commerce – «Dba_Name» may use an electronic commerce system to conduct third party procurements. If «Dba_Name» uses an electronic commerce system then the following requirements apply:
 - (1) Sufficient System Capacity – «Dba_Name»'s system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
 - (2) Written Procedures – Before any solicitation takes place, «Dba_Name» must establish adequate written procedures to ensure that all information FTA/INDOT requires for project administration is entered into the system and can be made readily available to INDOT as needed.
 - (3) Uses – «Dba_Name» may use its system to undertake the following types of third party procurements.

3.2. Determination of Needs

«Dba_Name» must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. «Dba_Name» shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

3.2.1. Eligibility

All products and services to be acquired with FTA funds must be eligible under the Federal law authorizing the FTA assistance award and any regulations there under. All products and services to be acquired with FTA funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA assistance to be used is derived.

3.2.2. Necessity

«Dba_Name» shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does need.

3.2.2.1. Unnecessary Reserves

«Dba_Name» shall limit the acquisition of federally assisted property and services to the amount it needs to support its operations.

3.2.2.2. Acquisition for Assignment Purposes

«DbName» shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

- (a) General Prohibition – The recipient may contract only for its current and reasonably expected public transportation needs, and may not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient’s Needs – FTA recognizes that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. The «Entity_Type»'s later needs might decrease due to changed circumstances or honest mistakes. In those situations, «DbName» may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
 - (1) Joint Procurements – «DbName» and one or more FTA recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
 - (2) Participation in Consolidated Vehicle Procurement (CVP) – «DbName» may enter into contracts with the State of Indiana under the Indiana Department of Administration (IDOA) Quantity Purchase Awards (QPAs) to acquire vehicles.
- (d) Procurement Size – For every procurement, «DbName» shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, «DbName» shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – «DbName» shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, «DbName» may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.
- (f) Lease Versus Purchase – «DbName» shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If «DbName» chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.
- (g) Specifications – «DbName»'s procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated.

«DbName»'s procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or Indiana laws or regulations.

3.3. Contractor Responsibilities

«DbName», in awarding contracts, financed in whole or in part, with FTA financial assistance, shall follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the “Super Circular” requirements that contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. § 5325(j) limits third party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Moreover, MAP -21, and prior to this, SAFETEA-LU, requires a recipient entering into a fixed guideway project contract to consider the contractor’s past performance, including information reported in FTA’s required Contractor Performance Assessment Reports, 49 U.S.C. § 5325(j)(2)(C).

3.3.1. Debarment and Suspension

Debarment and suspension regulations and guidance include the following provisions.

3.3.1.1. DOT Debarment and Suspension Regulations

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount. See, 2 CFR Part 1200. «DbName» shall apply DOT’s debarment and suspension requirements to itself and each third party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR Part 180.

3.3.1.2. System for Award Management

The System for Award Management (SAM) combines federal procurement systems and the Catalog of Federal Domestic Assistance into one new system. SAM includes the functionality from the following systems:

- Central Contractor Registry (CCR)
- Federal Agency Registration (Fedreg)
- Online Representations and Certifications Application
- Excluded Parties List System (EPLS)

At its discretion, «Db_Name» may collect a debarment and suspension certification from the prospective third party contractor or include a clause in the third party contract requiring disclosure. Additionally, it shall be the policy of «Db_Name» to verify that the prospective third party vendor is not listed as a debarred contractor on SAM. Documentation of SAM searches shall be retained in the permanent history file associated with each procurement.

3.3.1.3. Indiana Department of Labor

3.3.2. Lobbying Certification and Disclosure

If a third party contract will exceed \$100,000, before awarding the contract, «Db_Name» will obtain a lobbying certification, and if applicable, a lobbying disclosure from a prospective third party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

3.3.3. Federal Civil Rights Laws and Regulations

«Db_Name» agrees that it and its third party contractors at each tier will comply with:

3.3.3.1. Federal Equal Employment Opportunity (EEO) Requirements

Contractor EEO requirements include, but are not limited to:

- (a) Nondiscrimination in Federal Public Transportation Programs – (49 U.S.C. § 5332) covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- (b) Prohibition Against Employment Discrimination – (Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, and implementing Federal regulations] that prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

3.3.3.2. Nondiscrimination on the Basis of Sex

Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*, and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25 prohibit discrimination on the basis of sex.

3.3.3.3. Nondiscrimination on the Basis of Age

The Age Discrimination in Employment Act (ADEA) [29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 CFR Part 1625] prohibit employment discrimination against individuals on the basis of age. The “Age Discrimination Act of 1974, as amended [42

U.S.C. Sections 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90], also prohibit discrimination against individuals on the basis of age.

3.3.3.4. Federal Protections for Individuals with Disabilities

The Americans with Disabilities Act of 1990, as amended (ADA) [42 U.S.C. § *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

3.3.4. Socio-Economic Development

«Db_Name» must comply with applicable Federal laws and regulations that provide competitive opportunities for a contractor that qualifies as a disadvantaged business enterprise (DBE), minority owned firm, women’s business enterprise, or small business.

3.3.4.1. Disadvantaged Business Enterprises (DBE)

Section 1101(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended (SAFETEA-LU), requires FTA to make available at least 10 percent of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. «Db_Name» assists FTA in meeting this national goal. To receive FTA assistance, «Db_Name» must comply with applicable requirements of DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26.

3.3.4.2. Small and Minority Firms and Women’s Business Enterprises

FTA Circular 4220.1F, Chapter IV, Section 2a(6)(b) requires «Db_Name» and its subrecipients (if any) to take steps to ensure that it uses small and minority firms and women’s business enterprises (irrespective of whether they qualify as DBEs) to the fullest extent practicable. .

- (a) Notice –«Db_Name» shall make information available to potentially qualified firms about procurement opportunities. «Db_Name» shall include these contractors on solicitation lists and request their participation when they are potential sources.
- (b) Contract Size – To foster greater participation of small and minority firms and women’s business enterprises, «Db_Name» may divide total requirements into smaller tasks or quantities, when economically feasible.
- (c) Delivery Schedule – «Db_Name» may specify delivery schedules that encourage their participation.

- (d) Small Business Administration and the Department of Commerce Minority Business Development Agency – «DbName» may use the services and assistance of the Small Business Administration and the Department of Commerce’s Minority Business Development Agency.
- (e) Subcontracting Opportunities –«DbName» may require its prime third party contractors to include the preceding provisions in FTA assisted subcontracts.

3.3.5. Sensitive Security Information

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. § 114(s) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

3.3.6. Seat Belt Use

In compliance with Federal Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, «DbName» shall encourage each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in any third party subcontracts, involving the project.

3.4. Socio-Economic Requirements for the Acquisition of Property and Services

The following Federal laws and regulations imposing socio-economic requirements may affect a specific procurement:

3.4.1. Labor

The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired by «DbName» with FTA assistance:

3.4.1.1. Wage and Hour Requirements

For contracts in excess of \$100,000 that include labor performed by mechanics and/or laborers, «DbName» shall include contract provisions related to wage and hour requirements. «DbName» shall include provisions in its third party contracts requiring the contractor to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. These provisions are required for compliance with Sections 102 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3702, and Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally

Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

3.4.1.2. Fair Labor Standards

The Fair Labor Standards Act (29 U.S.C. Sections 201 *et seq.*) applies to employees performing work involving commerce.

3.4.2. Civil Rights

The following Federal civil rights laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

3.4.2.1. Nondiscrimination in Federal Public Transportation Programs

Federal transit law at 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53 prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

3.4.2.2. Title VI of the Civil Rights Act

In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and DOT regulations, “Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21.

3.4.2.3. Environmental Justice

Executive Order No. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” February 11, 1994, 42 U.S.C. § 4321 note, and DOT Order 5610.2, “Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations,” 62 FR 18377, April 15, 1997, protect minority populations and low-income populations against disproportionately high and adverse effects of federally assisted programs.

3.4.2.4. Limited English Proficiency (LEP)

This guidance clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. (Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C.

Section 2000d-1 note, and DOT “Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,” December 14, 2005).

3.4.2.5. Nondiscrimination on the Basis of Disability

«Db_Name» agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

- (a) Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) – 29 U.S.C. § 794, prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- (b) The Americans with Disabilities Act of 1990, as amended (ADA) – 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.
- (c) DOT Public Transportation Regulations implementing Section 504 and the ADA – These regulations include DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27, DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37, and Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 CFR Part 1192 and 49 CFR Part 38. Examples of requirements include, but are not limited to, the following:
 - (1) Design and Construction – Accessibility requirements for the design and construction of new transportation facilities;
 - (2) Accessibility and Usability – Requirements that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs;
 - (3) Complementary Paratransit Service – Requirements that public entities providing fixed-route service, (including a private non-profit entity providing public transportation service on behalf of the State or designated recipient as a subrecipient providing fixed-route service), provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and
 - (4) Equal Opportunity – Requirements for compliance with service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems and services.

3.4.2.6. Electronic Reports and Information

Reports and other information prepared in electronic format developed in connection with a third party contract that «Db_Name» intends to provide to FTA, among others, whether as a contract end item or in compliance with contract administration provisions, must comply with

the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194.

3.4.3. Environmental Protections

Federal laws and regulations require «Db_Name» to comply with applicable environmental requirements and implement them as necessary through third party contracts, including:

3.4.3.1. Environmental Mitigation

«Db_Name» shall include adequate third party contract provisions to facilitate compliance with environmental mitigation measures it has agreed to implement.

3.4.3.2. National Environmental Policy Act (NEPA)

Certain acquisitions and the timing of certain acquisitions can adversely affect the environmental review process required by the NEPA (42 U.S.C. § 4321 through 4335) for a project constituting a major Federal action.

- (a) Property – «Db_Name» may not enter into binding arrangements for the acquisition of property that may or would affect environmental impact determinations with respect to the underlying project or otherwise interfere with any required environmental impact reviews until applicable environmental impact determinations have been made.
- (b) Services – Council on Environmental Quality regulations, “Other Requirements of NEPA” (40 CFR Part 1506, at Section 1506.5(c)), require «Db_Name» to obtain a disclosure statement from the contractor selected to prepare an environmental impact statement specifying that the contractor has no financial or other interest in the outcome of the project.

3.4.3.3. Protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites

DOT’s enabling legislation has special requirements designed to protect parks, recreation areas, wildlife and waterfowl refuges, and historic sites (49 U.S.C. § 303(b) and 303(c)) that may affect the types and methods of procurement that «Db_Name» may use.

3.4.3.4. Clean Air Act and Federal Water Pollution Control Act

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

3.4.3.5. Recycled Products

The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6962, requires governmental recipients to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. EPA guidelines, “Comprehensive Procurement Guideline for Products Containing Recovered Materials” (40 CFR Part 247), direct that third party contracts of \$10,000 or more with governmental recipients specify a competitive preference for products containing recycled materials identified in those EPA guidelines.

3.4.3.6. Other Federal Environmental Protection Requirements

Additional third party contract provisions may be needed for compliance with other Federal laws and regulations. FTA’s Master Agreement includes environmental laws and regulations that may affect the acquisition of property or services with FTA assistance.

3.4.4. Energy Conservation

Appendix II to 2 CFR part 200 requires third party contract provisions as necessary for compliance with applicable energy efficiency standards and policies of State energy conservation plans issued under the Energy Policy and Conservation Act, as amended (42 U.S.C. § 6321 *et seq.*).

3.4.5. Preference for U.S. Property--Buy America

FTA’s “Buy America” regulations apply to procurements in excess of \$100,000 that involve the purchase of iron, steel, manufactured goods, or rolling stock to be delivered to «Db_Name» under the third party contract for incorporation into the FTA project.

3.4.6. Shipments of Property--U.S. Flag Requirements

3.4.6.1. Shipments by Ocean Vessel

Previously the Common Grant Rules and now the provisions of 2 CFR 200 require third party contract provisions to ensure compliance with 46 U.S.C. § 55303 and Maritime Administration regulations, “Cargo Preference-U.S. Flag Vessels,” 46 CFR Part 381.

3.4.6.2. Shipments by Air Carrier

Third party contracts involving shipments of federally assisted property by air carrier requires provisions to ensure compliance with Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (“Fly America” Act, 49 U.S.C. § 40118), and GSA regulations, “Use of United States Flag Air Carriers” (41 CFR Sections 301-10.131 through 301-10.143).

3.4.7. Project Travel--Use of U.S. Flag Air Carriers

Third party contracts to acquire transportation by air carrier needed by people participating in a federally assisted project require provisions to ensure compliance with Section 5 of the International Air

Transportation Fair Competitive Practices Act of 1974, as amended (“Fly America” Act, 49 U.S.C. Section 40118), and GSA regulations, “Use of United States Flag Air Carriers” (41 CFR §Sections 301-10.131 through 301-10.143).

3.5. Technical Restrictions on the Acquisition of Property and Services

The following Federal laws and regulations imposing technical requirements may affect a specific procurement:

3.5.1. Intelligent Transportation Systems (ITS)

ITS property and services must comply with the National ITS Architecture and Standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455 *et seq.*, January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

3.5.2. Use of \$1 Coins

To comply with Section 104 of the Presidential \$1 Coin Act of 2006, 31 U.S.C. § 5312(p), FTA assisted property that requires the use of coins or currency in public transportation service or supporting service must be fully capable of accepting and dispensing \$1 coins.

3.6. Rolling Stock--Special Requirements

The following Federal laws and regulations impose requirements that may affect rolling stock procurements.

3.6.1. Accessibility

Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)” [49 CFR Part 37], and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles” [36 CFR Part 1192 and 49 CFR Part 38].

3.6.2. Transit Vehicle Manufacturer Compliance with DBE Requirements

Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA’s DBE requirements.

3.6.3. Minimum Service Life

«Db_Name» shall maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that «Db_Name» may acquire.

3.6.4. Spare Ratios

«Db_Name» shall not acquire an excessive number of spare vehicles not regularly used in public transportation service.

3.6.5. Air Pollution and Fuel Economy

Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, “Control of Air Pollution from Mobile Sources” (40 CFR Part 85); EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines” (40 CFR Part 86); and EPA regulations, “Fuel Economy of Motor Vehicles” (40 CFR Part 600).

3.6.6. Pre-award and Post Delivery Review

Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable requirements of 49 U.S.C. § 5323(m) and FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases” (49 CFR Part 663), that do not conflict with 49 U.S.C. § 5323(m).

3.6.7. Bus Testing

Each third party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of FTA regulations, “Bus Testing” (49 CFR Part 665).

3.6.8. In-State Dealers

«Db_Name» may not limit third party bus procurements to in-state dealers (49 U.S.C. Section 5325(i)).

3.6.9. Basis for Contract Award

As permitted by 49 U.S.C. Section 5325(f), «Db_Name» may award a third party contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.

3.6.10. Five-Year Limitation

«Db_Name» may enter into a multi-year contract to buy rolling stock with an option not exceeding five (5) years to buy additional rolling stock or replacement parts (49 U.S.C. § 5325(e)(1)). «Db_Name» may not exercise that option later than five (5) years after the date of its original contract.

3.7. Public Transportation Services—Special Requirements

Although the Super Circular refer to the following Federal requirements in the context of Federally assisted procurements, these requirements will affect how a third party contractor implements its contract to provide public transportation services financed with Federal assistance. Consequently, «Db_Name» must include provisions in its third party contract ensuring compliance with the following requirements, or «Db_Name» must obtain the third party contractor’s agreement in another form, as a matter of contractor responsibility, to ensure compliance with the following:

3.7.1. Protections for Public Transportation Employees

When «Db_Name» acquires public transportation services from a third party contractor, the terms of «Db_Name»'s DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification, which is required by 49 U.S.C. Section 5333(b) and implementing DOL guidelines, “Section 5333(b), Federal Transit Law” [29 CFR Part 215]. Consequently, the third party contractor must comply with the terms of that DOL certification. The Fair Labor Standards Act (29 U.S.C. § *et seq.*) also applies to public transportation employees performing work involving commerce.

3.7.2. Drug and Alcohol Testing

A third party contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. § 5331 and FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations” (49 CFR Part 655).

3.7.3. Accessibility

A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. § 12101 *et seq.* and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles” (36 CFR Part 1192 and 49 CFR Part 38). Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services.

3.7.4. Protection of Animals

A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act (7 U.S.C. § 2131 *et seq.*) and Department of Agriculture regulations, “Animal Welfare” (9 CFR Subchapter A, Parts 1, 2, 3, and 4).

3.7.5. Charter Service Restrictions

A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, “Charter Service” (49 CFR Part 604); however, INDOT expressly prohibits any provision of charter service by Section 5311 grantees.

3.7.6. School Bus Restrictions

A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations, "School Bus Operations" (49 CFR Part 605), to the extent consistent with 49 U.S.C. § 5323(f) or (g).

3.8. Construction – Special Requirements

The following Federal laws and regulations impose requirements that may affect construction projects undertaken by «Db_Name» on FTA-assisted construction projects:

3.8.1. Bonding

Previously the Common Grant Rules, and now the provisions of 2 CFR 200, require bonds for all construction contracts exceeding the simplified acquisition threshold, currently \$100,000, unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

3.8.2. Bid Guarantee

«Db_Name», consistent with both FTA and all applicable provisions of 2 CFR Part 200.325(a), shall require each bidder to provide a bid guarantee equivalent to five percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

3.8.3. Performance Bond

«Db_Name», consistent with both FTA and all applicable provisions of 2 CFR Part 200, shall require the third party contractors to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.

3.8.4. Payment Bond

«Db_Name» shall require all third party contractors to obtain a standard payment bond for 100 percent of the contract price. A payment bond is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

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

3.8.5. Acceptable Sureties

FTA guidance in 4220.1F recommends that non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," (31 CFR Part 223). For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. As FTA encourages governmental recipient to require similarly acceptable sureties, it shall be the policy of «Db_Name» to such accept sureties.

3.8.6. Reduced Bonding

«Db_Name» recognizes that bonding costs can be expensive. «Db_Name» will accept a local bonding policy that conforms to the minimums described in Section 3.8.4. If bonding levels are sought at levels less than these amounts, «Db_Name» must obtain the prior approval of FTA. FTA shall approve such requests only if it determines that «Db_Name»'s bonding policy adequately protects the Federal interest in the project.

3.8.7. Excessive Bonding

«Db_Name» must adhere to the 2 CFR Part 200's prohibition against excessive bonding requirements. However, if «Db_Name» determines it has a material risk of loss because of a failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.8.13 only with the prior approval of FTA.

3.8.8. Seismic Safety

«Db_Name» shall include seismic safety provisions in its third party contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. § 7701 *et seq.*, and DOT regulations, "Seismic Safety," 49 CFR Part 41 at § 41.117 and 41.120.

3.8.9. Value Engineering

«Db_Name» shall use value engineering in contracts for construction projects.

3.8.10. Equal Employment Opportunity

«Db_Name» shall include in all third party construction contracts provisions ensuring compliance with DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," October 13, 1967.

3.8.11. Prevailing Wages

Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction projects. «Db_Name» will ensure that any third

party contracts at any tier exceeding \$2,000 shall include provisions requiring compliance with the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.*, and implementing DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction” (29 CFR Part 5). The Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. «Dbas_Name» will include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and will condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed in Section 3.4.1.1 of this Manual.

3.8.12. Anti-Kickback

For all third party construction and repair contracts exceeding \$100,000, «Dbas_Name» shall require provisions for compliance with the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874, and implementing DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 CFR Part 3. The Act prohibits a contractor from inducing, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled. Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. § 3701(b)(3)(A)(iii), increased the threshold for construction and repair to \$100,000 from \$2,000 as set forth in the Super Circular, so that a federally assisted construction contract must exceed \$100,000 before these “Anti-Kickback” prohibitions apply to that contract.

3.8.13. Construction Safety

«Dbas_Name» shall adhere to the applicable provisions of 2 CFR Part 200 that require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and its implementing DOL regulations, “Safety and Health Regulations for Construction,” 29 CFR Part 1926. Notably, Section 4104(c) of the Federal Acquisition Streamlining Act of 1994, 40 U.S.C. § 3701(b)(3)(A)(iii), increased the threshold for construction safety protections to \$100,000 from \$2,000 as set forth in the applicable provisions of 2 CFR Part 200, so that a Federally assisted construction contract must exceed \$100,000 before these construction safety requirements apply to that contract.

3.8.14. Labor Neutrality

«Dbas_Name» shall not require or prohibit the use of a project labor agreement (PLA), except if special circumstances require a PLA to be used to avert an imminent threat to public health or safety. A third party contractor or subcontractor, however, may voluntarily enter into a PLA. These provisions are needed to ensure compliance with Executive Order No. 13202, “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. § 251 note.

3.8.15. Preference for U.S. Property—Buy America

Any construction contract exceeding \$100,000 entered into by «Dba_Name» with FTA assistance shall include provisions that require the third party contractor to provide property produced or manufactured in the United States for use in the construction project that the recipient acquires, unless FTA has granted a waiver authorized by those regulations. FTA cautions that its Buy America regulations are complex and different from the Federal “Buy American Act” regulations in FAR Subparts 25.1 and 25.2.

Property that the contractor acquires to perform its construction activities for the recipient, such as tools, machinery, and other equipment or facilities, is not covered by FTA’s Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, «Dba_Name» may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether that property would comply with FTA’s Buy America regulations.

3.8.16. Accessibility

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

4. SOURCES OF ACQUISITIONS

4.1. Force Account

Force account means use of «Db_Name»'s own labor forces and equipment to undertake a project (typically construction, renovation, or repair). The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the «Entity_Type»'s ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient's decision. «Db_Name» does not charge force account labor to its FTA grants.

4.2. Joint Procurements

«Db_Name» may participate in joint procurements whereby «Db_Name» and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to «Db_Name»'s participation in joint procurements:

- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- «Db_Name» is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal requirements and that the solicitation document and contract includes all required clauses and certifications.

4.3. State or Local Government Purchasing Schedules or Purchasing Contracts

4.3.1. Definition

FTA uses the term “state or local government purchasing schedule” to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration's (GSA) Cooperative Purchasing Program available for Federal Government use.

In Indiana, the QPA program is an example of a State Government Purchasing Schedule. INDOT has authorized its grantees under multiple FTA programs to use these purchase schedules. This is a condition of the original purchase specifications and individual grantees do not need to negotiate with vendors in order to participate in the purchasing schedule.

4.3.2. Applicability of Federal Provisions

When obtaining property or services in this manner, «Db_Name» must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document. While INDOT takes all precautions to ensure that such provisions are in the original solicitation and contract documents, it is the grantee's responsibility to ensure that the provisions are included and followed.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, «Db_Name» may request the vendor to append the required Federal clauses in the purchase order or other document that effects the «Db_Name's» procurement. When this method is used, «Db_Name» shall obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

4.3.3. Federal Supply Schedules

Purchases by «Db_Name» from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and to products and services to facilitate recovery from a major disaster. The following requirements apply to «Db_Name» purchases from GSA schedules:

- «Db_Name» is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, «Db_Name» may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event. «Db_Name» shall be responsible for ensuring that the products and services acquired will only be used for recovery.
- «Db_Name» must ensure that all Federal requirements, required clauses and certifications are properly followed and included, whether in the master intergovernmental contract or «Db_Name's» purchase document.
- «Db_Name» is required to evaluate the reasonableness of prices obtained from GSA schedules. GSA schedule pricing may not be used as a sole or single source for procurement. «Db_Name» may only use GSA schedule pricing as one of multiple pricing sources solicited in accordance with its requirements for small purchases described in Section 5.

4.3.4. Existing Contracts

«Db_Name» may use existing contract rights as an acquisition source. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

4.3.4.1. Permissible Actions

Within the conditions set forth below, «Db_Name» may use existing contract rights held by another recipient of FTA assistance:

- (a) Exercise of Options – «Db_Name» may use contract options held by another recipient of FTA assistance with the following limitations:

- (1) Consistency with the Underlying Contract – «Db*_Name» must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
 - (2) Price – «Db*_Name» may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
 - (3) Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
 - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
 - ii. Negotiating a Lower Option Price – Exercising an option after «Db*_Name» has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
- (b) Assignment of Contract Rights (“Piggybacking”) – If a recipient of FTA assistance finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to «Db*_Name» if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. «Db*_Name» may use contractual rights through assignment from another recipient of FTA assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. «Db*_Name» need not perform a second price analysis if a price analysis was performed for the original contract; however, «Db*_Name» must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. «Db*_Name» shall be responsible for ensuring the contractor’s compliance with FTA’s Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, however, «Db*_Name» shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that «Db*_Name» seeks, do not exceed the amounts available under the assigning recipient’s contract.

4.3.4.2. Impermissible Actions

«Db*_Name» may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity

has been added primarily to permit assignment of those contract rights to another entity.

- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on.”

4.4. The Open Market

«Db_Name» will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this document.

5. PROCEDURES FOR OPEN MARKET PROCUREMENTS

5.1. Solicitation of Competitive Price Quotes, Bids or Proposals

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for “full and open competition.”

5.2. Receipt and Evaluation of Unsolicited Proposals

«Db_Name» may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, «Db_Name» must seek competition. To satisfy the requirement for full and open competition, «Db_Name» must take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize its receipt of the unsolicited proposal;
- Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought;
- Publicize its interest in acquiring the products or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, «Db_Name» may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

5.3. Prequalification

«Db_Name» may prequalify bidders, offerors and products for procurement purposes; however, «Db_Name» is not required to do so. The decision of whether to require prequalification for eligibility to participate in procurement shall be made separately for every procurement and shall be approved by the «Procurement_Officer».

«Db_Name» may prequalify bidders, offerors and products for procurement purposes if:

- «Db_Name» ensures that all prequalification lists it uses are current;
- «Db_Name» ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and
- «Db_Name» permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). «Db_Name» is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before

or during that solicitation nor must «Db_Name» expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

5.4. Solicitation Requirements and Restrictions

Every procurement solicitation that «Db_Name» issues above the micro-purchase level (currently established in Federal guidance at \$3,000), as defined below, must include the following information and be advertised in a manner that ensures adequate and open competition.

5.4.1. Description of the Property or Services

The solicitation and the contract awarded thereunder must include a clear and accurate description of «Db_Name»'s technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

5.4.1.1. Descriptive Elements

«Db_Name» will prepare descriptions of property, goods, or service in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.

5.4.1.2. Quantities

Additional quantities or options above «Db_Name»'s needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.

5.4.1.3. Brand Name or Equal

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

5.4.1.4. INDOT Pre-Bid Concurrence

INDOT requires grantees to submit all bid contracts, IFBs and RFPs for purchases or leases of \$50,000 or greater must be submitted to INDOT for review. In addition, grantees must make all technical specifications available for review, when INDOT believes such a review is needed to ensure that the purchase or lease specified is consistent with grant award. Also, grantees must make available all procurement documentation upon request by INDOT.

Procurement Planning. It is the responsibility of the grantee to include INDOT concurrence requirements into the procurement schedule. While INDOT will attempt to respond to each request as soon as possible, grantees should allow eight (8) weeks to receive INDOT pre-bid concurrence.

5.4.1.5. Prohibited Practices

Solicitations with requirements that contain features that unduly restrict competition may not be used. «Db_Name» shall not:

- Impose unreasonable business requirements for bidders or offerors.
- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.
- Make a noncompetitive award to any person or firm on a retainer contract with «Db_Name» Transit if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product, or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to «Db_Name» is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to «Db_Name» Transit due to other activities, relationships, contracts, or circumstances.
 - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

5.4.2. Evaluation Factors.

All solicitations issued by «Db_Name» shall identify all factors to be used in evaluating bids or proposals. At the discretion of «Procurement_Officer», the relative order of importance and/or weights may be communicated to prospective offerors.

5.4.3. Permissible Contract Types

«DbName» shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

5.4.3.1. Firm Fixed Price

A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

5.4.3.2. Cost Reimbursement

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

5.4.4. Prohibitive or Restricted Contract Types

The following contract types are prohibited or restricted:

5.4.4.1. Cost Plus Percentage of Cost

Cost plus Percentage of Cost type contracts are prohibited.

5.4.4.2. Time and Materials

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between «DbName» and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

5.4.5. Other Federal Requirements Affecting the Property or Services to be Acquired

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

5.4.6. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor

The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

5.4.7. Reservation of Right to Award to Other Than the Low Bidder or Offeror

The solicitation must specifically reserve «DbName»'s right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, «DbName» will be obligated to award the contract to the low bidder.

5.4.8. Reservation of Right to Reject All Bids or Offers

The solicitation must specifically reserve «Dba_Name»'s right to reject all bids or offers.

5.5. Methods of Procurement

«Dba_Name» shall use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Indiana 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.

5.5.1. Micro-Purchases

5.5.1.1. Definition

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

5.5.1.2. Approval Authority

Micro-purchases must be approved in writing by one of the following «Dba_Name» employees:

- «Micro_Approval1»; or
- «Micro_Approval2».

5.5.1.3. Competition

«Dba_Name» may acquire products and services valued at less than \$3,000 without obtaining competitive quotations. 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.

5.5.1.4. 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 «Dba_Name»'s Federally-assisted procurements.

5.5.1.5. 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.

5.5.2. Small Purchases

5.5.2.1. 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 «Small_Threshold».

5.5.2.2. Approval Authority

Small purchases must be approved in writing by one of the following «Db_Name» employees:

- «Small_Approval1»; and/or
- «Small_Approval2».

5.5.2.3. Required Competition

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

5.5.2.4. 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 «Db_Name»'s Federally-assisted procurements

5.5.2.5. 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.

5.5.2.6. Special Considerations

«Db_Name» 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.

«Db_Name» reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the «Procurement_Officer» believes it is in the best interests of the «Entity_Type» to do so.

5.5.3. Formal Purchases

5.5.3.1. Definition

Large purchases are those purchases of products and services that cost greater than «Formal_Threshold» or the Federal threshold of \$100,000.

5.5.3.2. Approval Authority

Large purchases must be approved in writing by the following «Db_Name» employees or officials:

- «Formal_Approval1»; or
- «Formal_Approval2».

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

5.5.3.3. Procurement Methods

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

- Sealed Bid method; and
- Competitive Proposal method.

5.5.3.4. 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.

5.5.3.5. 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.

5.5.3.6. Special Considerations

«Dba_Name» 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.

5.5.3.7. 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 «Procurement_Officer» 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.

5.5.3.8. 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 «Db_Name» or that is considered to be the “best value” to «Db_Name». 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 «Db_Name» 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 «Db_Name» or that represents the “best value” to «Db_Name» with price and other factors considered.
 - (6) Best Value – «Db_Name» may award a contract to the offeror whose proposal provides the greatest value to «Db_Name». 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. «Db_Name» 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.

5.5.3.9. Two-Step Procurements

«Db_Name» 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 «Db_Name»'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.

5.5.3.10. Architectural and Engineering (A&E) Services and Other Services

FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. § 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below.

(a) Qualifications-Based Procurement Procedures Required – «DbA_Name» must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:

- Program management;
- Construction management;
- Feasibility studies;
- Preliminary engineering;
- Design, architectural, engineering;
- Surveying, mapping; and
- Other related services.

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

(b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.

(c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:

- (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
- (2) Price – Price is excluded as an evaluation factor.
- (3) Most Qualified – Negotiations are first conducted with only the most qualified offeror.
- (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if

necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

5.6. Procurement by Other Than Full and Open Competition

Normally, «Db_Name» must provide for full and open competition when soliciting bids or proposals. The Common Grant Rule for governmental recipients, however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

5.6.1. When Appropriate

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

5.6.2. Competition Adequacy

After soliciting several sources and receiving an inadequate response, «Db_Name» shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If «Db_Name» determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, «Db_Name» may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

5.6.2.1. Sole Source

When «Db_Name» requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, «Db_Name» may make a sole source award with the prior approval of INDOT. In addition, when «Db_Name» requires an existing contractor to make a change to its contract that is beyond the scope of that contract, «Db_Name» has made a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
 - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to «Db_Name» only from one source and has not in the past been available to «Db_Name» from another source.

- (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
- (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling «Db_Name»'s needs.
- (b) Procurement by noncompetitive negotiation may be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances exists:
- The item is available only from a single source;
 - A public urgency or emergency for the item exists which will not permit a delay resulting from competitive solicitation;
 - INDOT authorizes noncompetitive negotiations;
 - After solicitation of a number of sources, competition is determined inadequate; or
 - The item is an associated capital maintenance item as defined in [49 USC 5307\(a\)\(1\) et seq.](#) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify to INDOT that such manufacturer or supplier is the only source for the item and the price of the item is no higher than the price paid for item by like customers; and
 - Cost analysis, *i.e.*, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of cost and profit, is required.
- (c) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, «Db_Name» should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
- (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond «Db_Name»'s control.
- (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within «Db_Name»'s control.
- (d) Unusual and Compelling Urgency – «Db_Name» may limit the number of sources from which it solicits bids or proposals when «Db_Name» has such an unusual and urgent need for the products or services that «Db_Name» would be seriously injured unless it were permitted to limit the solicitation. «Db_Name» may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.

- (e) Authorized by FTA – «Db_Name» may request permission from FTA to allow it to use noncompetitive proposals for a particular procurement.
- (f) When Prohibited – Less than full and open competition is not justified based on:
 - (1) Failure to Plan – «Db_Name»'s lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
 - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement;
- (g) Procurement Procedures – The following requirements apply when «Db_Name» completes a procurement utilizing less than full and open competition:
 - (1) Potential Sources – «Db_Name» must solicit offers from as many potential sources as is practicable under the circumstances.
 - (2) Sole Source Justification – «Db_Name» must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons for why a sole source procurement is appropriate, state which of the authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis and be signed by the «Procurement_Officer». If «Db_Name» decides to solicit an offer from only one source, «Db_Name» must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.
 - (3) Cost Analysis – «Db_Name» must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
- (h) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the «Procurement_Officer» to be in the best interest of «Db_Name», noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the «Procurement_Officer».

5.7. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by «Db_Name».

5.7.1. General

When evaluating bids or proposals received in response to a solicitation, «Db_Name» 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. «Db_Name» may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.

5.7.2. Options

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

5.7.2.1. Evaluation Required

In general, «Db_Name» 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.

5.7.2.2. Evaluation Not Required

«Db_Name» need not evaluate bids or offers for any option quantities when «Db_Name» 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.

5.7.2.3. 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 «Db_Name» 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.

5.8. Contract Award Requirements

The following standards shall apply to all contract award decisions made by «Db_Name»:

5.8.1. Award to Other Than the Lowest Bidder or Offeror

«Db_Name» 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. «Db_Name» 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, «Db_Name» must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

5.8.1.1. Award Only to a Responsible Bidder or Offeror

«Db_Name» 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. «Db_Name» 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. «Dba_Name» 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 «Dba_Name». For every procurement action above the micro-purchase level, «Dba_Name» must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.1).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, «Dba_Name», 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. INDOT expects «Db_Name» 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.

5.8.1.2. Rejection of Bids and Proposals

«Db_Name» may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. «Db_Name» 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.

5.9. Independent Cost Estimate and Cost and Price Analysis

5.9.1. Independent Cost Estimate

For every procurement, «Db_Name» shall make a written independent estimate of cost prior to receiving price quotes, bids or proposals.

5.9.2. Cost or Price Analysis

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

5.9.2.1. Price Analysis

If «Db_Name» 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.

5.9.2.2. Cost Analysis

«Db_Name» 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.

5.9.3. Approval of Contracts

All contracts must be signed by the «Contract_Signer».

(This page left blank intentionally.)

6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS

6.1. «Db_Name» Staff Responsibilities

Prior to execution of third party contracts, «Db_Name» shall designate a Project Manager to serve as «Db_Name»'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.

6.2. 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.

6.2.1. 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.

6.2.2. 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.

6.2.3. Period of Performance

«Db_Name» will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

6.2.3.1. General Standards

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

6.2.3.2. INDOT Restrictions on Contract Period of Performance

«Db_Name»'s 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 INDOT's Section 5311 Program Manual.

6.2.3.3. 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 «Db_Name» awards a third party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

6.2.3.4. Authority to Extend

The «Contract_Signer» 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.

6.3. 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.

6.4. Payment Provisions

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

6.4.1. INDOT Support for the Project

INDOT manages all FTA programs on a cost reimbursement basis; costs may only be incurred by «Db_Name» if INDOT has awarded a financial assistance contract to «Db_Name».

6.4.1.1. Progress Payments

Progress payments are payments for contract work that has not been completed. «Db_Name» may use INDOT 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.

6.4.1.2. Adequate Security for Progress Payments

Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. INDOT acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

6.4.1.3. Adequate Documentation

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

6.4.1.4. 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. «Db Name», however, may not make progress payments for other than construction contracts based on this percentage method.

6.5. Protections Against Performance Difficulties

«Db Name» shall include provisions in its third party contracts that will reduce potential problems that might occur during contract performance, as follows:

6.5.1. Changes

«Db Name» shall include provisions that address changes and changed conditions in all third party contracts except for routine supply contracts.

6.5.2. Remedies

«Db Name» shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

6.5.2.1. Liquidated Damages

«Db Name» may use liquidated damages if «Db Name» reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect

«Dba_Name»'s costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.

6.5.2.2. 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.

6.5.2.3. Suspension of Work

«Dba_Name» may include provisions pertaining to suspension of work in its third party contracts.

6.5.2.4. Termination

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

6.6. Contents of Complete Contract Files

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

6.6.1. Written Record of Procurement History

«Dba_Name» shall maintain written records detailing the history of the procurement, including records relating to:

6.6.1.1. Procurement Method

«Dba_Name» 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.

6.6.1.2. Contract Type

«Dba_Name» must state the reasons for selecting the contract type it used.

6.6.1.3. Contractor Selection

«Dba_Name» must state its reasons for contractor selection or rejection, including written justification and evaluation documents;

6.6.1.4. Contractor Responsibility

«Dba_Name» must provide a written determination of responsibility for the successful contractor;

6.6.1.5. Cost or Price

«Dba_Name» must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis; and

6.6.1.6. Reasonable Documentation

«Dba_Name» 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.

6.7. 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.

6.8. Contract Administration and Close-Out Documents

«Dba_Name» shall maintain written records detailing the performance and close-out of the contract, including records relating to:

6.8.1. Contractor Performance

«Dba_Name» 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.

6.8.2. Contract Deliverables

«Dba_Name» must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables.

6.8.3. Contract Changes

«Dba_Name» must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution.

6.8.4. Contract Payments

«Dba_Name» 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.

6.8.5. Contract Close-Out

«Dba_Name» must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to «Dba_Name», and contract audit and final reconciliation.

6.9. Protest Procedures

6.9.1. Statement of Policy

«Dba_Name» 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, INDOT will not substitute its judgment for that of «Dba_Name» unless the matter is primarily a Federal concern. Nevertheless, INDOT and FTA can become involved in «Dba_Name»'s administrative decisions when a «Dba_Name» protest decision is appealed to INDOT.

«Dba_Name» shall give timely notification to INDOT when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. «Dba_Name» shall disclose all information about any third party procurement protest to INDOT upon request.

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

6.9.2. «Dba_Name» Staff Responsibilities

The following staff responsibilities shall be assigned in all protests:

- «Procurement Officer» – Responsibilities include: ensuring that the «Dba_Name» Protest Procedure is included in all solicitation documents; and providing information to and assisting the «Contract_Signer» and «Legal_Counsel» with the resolution of protests.
- «Legal Counsel» – Responsibilities include: reviewing all procurement protests; and advising and assisting the «Dba_Name» as needed with the resolution of all procurement protests.

6.9.3. Solicitation Provision

«Db_Name» shall insert the following provision in all solicitation documents:

6.9.3.1. 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 «Procurement_Officer» as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The «Procurement_Officer» 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 «Procurement_Officer» as the result of a protest the postponement will be announced through an addendum to the solicitation.

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

6.9.3.2. Pre-Award Protests

With respect to protests made after the deadline for submission of bids/proposals but before contract award by «Db_Name», 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, «Db_Name»'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 «Procurement_Officer» as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by «Db_Name».

The «Procurement_Officer» 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 «Db_Name» shall announce the contract award.

The decision by the «Procurement_Officer» 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.

6.9.4. Requirements for Protests

All protests must be submitted to «Db_Name» 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 «Db_Name».

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 «Procurement_Officer» at the address shown in the solicitation documents.

6.9.5. Protest Response

The «Procurement_Officer» 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, «Db_Name» 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 «Db_Name» response to the protest and «Db_Name» will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

6.9.6. Review of Protests by INDOT

All protests involving contracts financed with Federal assistance shall be disclosed to INDOT. Protesters shall exhaust all administrative remedies with «Db_Name» prior to pursuing protests with INDOT. INDOT 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. Consistent with INDOT's Vendor Handbook, http://www.in.gov/indot/files/Vendor_Handbook_2-14.pdf, appeals to INDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of «Db_Name» final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to INDOT.

This Procurement Policy has been duly accepted and approved on this day, _____ of _____, 20____ by the _____ (COUNTY COMMISSIONERS, CITY COUNCIL, OR OTHER GOVERNING BODY) for _____ (NAME OF SECTION 5311 Subrecipient) _____, as evidenced by the signature(s) below.

APPROVED:

Type Name and Title

Signature

Date

Type Name and Title

Signature

Date

Type Name and Title

Signature

Date

(INSERT ADDITIONAL SIGNATURE LINES/SHEETS, AS APPLICABLE)