



COUNTY COMMISSION

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January 18, 2022

Mr. Bradley B. Lindsey, P.E.
State Local Transportation Engineer
Local Transportation Bureau Chief
Alabama Department of Transportation
1409 Coliseum Blvd. Admin. 110
Montgomery, AL 36110

RE: Adoption of Baldwin County Commission Procurement Procedures for Federal Transit Administration (FTA) Funded Projects

Dear Mr. Bradley:

The Baldwin County Commission, during its regularly scheduled meeting held on January 18, 2022, adopted the attached *Baldwin County Commission Procurement Procedures* for Federal Transit Administration (FTA) Funded Projects for Baldwin Regional Area Transit System (BRATS) and the Eastern Shore Metropolitan Planning Organization (MPO).

Enclosed is a **executed copy** of the *Procedures* for your file.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 937-0330 or Ann Simpson, Director of Transportation BRATS, at (251) 972-6817.

Sincerely,

JAMES E. BALL, Chairman
Baldwin County Commission

JB/clc Item BD1

cc: Chandra Middleton, UAH Southern Regional Mgr. - via email at middletonc@dot.state.al.us
Ann Simpson, Director of Transportation
Wanda Gautney, Purchasing Director
Sarah Hart Sislak, MPO Coordinator
Loren Lucas, BRATS Accounting Manager

ENCLOSURE(S)

Baldwin County Commission

PROCUREMENT PROCEDURES

Applicable to all Federal Transit Administration Funded Projects

FEDERAL TRANSIT ADMINISTRATION PROGRAMS

Baldwin County Commission

Ann Simpson, Director of Transportation

Sarah Hart Sislak, MPO Coordinator

Wanda Gautney, Purchasing Director

Initial Approval Date: November 1, 2016

Revision Approval Date: August 21, 2018

Revision Approval Date: January 18, 2022

ACCESSIBLE FORMATS

This document is available in accessible formats upon request. Paper copies of this document, as well as information regarding accessible formats, may be obtained by contacting the Baldwin County Commission, at:

Wanda Gautney, Purchasing Director

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Procurement Procedures

I. INTRODUCTION

Baldwin Regional Area Transit System (BRATS), a department of the Baldwin County Commission, is primarily funded by federal grants that are administered by the Federal Transit Administration. The Baldwin County Commission oversees the procurement of equipment, real property, and other goods and services that are made, in entirety or in part, using said grant funds. The procurement procedures contained herein apply only to programs involving FTA funds and will be followed regardless of whether the Baldwin County Commission is a direct recipient or a sub-recipient of the funds. In some instances, the procurement policies of the Baldwin County Commission may be more restrictive than those of the FTA. If so, the more restrictive policies will be adhered to.

The two programs of which the Baldwin County Commission is a recipient on behalf of BRATS are as follows:

Section 5307 Funds for Small Urbanized Areas

The Baldwin County Commission is a direct recipient of section 5307 funds for small urbanized areas.

Section 5311 Funds for Rural Areas

The Baldwin County Commission is a sub-recipient of section 5311 funds for rural areas through ALDOT.

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

ALDOT has developed a decentralized method of overseeing and monitoring the procurement activities of its subrecipient transit agencies. In this role, ALDOT does not attempt to substitute its judgment for that of the transit agency in any decision-making that occurs in the procurement process. Instead, ALDOT's role is to confirm that the agency's procurement actions are internally supported by the agency's own written procedures and that they are in full compliance with State and Federal laws. ALDOT's Procurement Procedures manual is intended to provide guidance on standard processes for procurement using transit funding, however agencies should seek specific guidance from the ALDOT Transit Section for specific procurement questions.

As the designated recipient for Federal Transit Administration (FTA) 5311 funding in Alabama, ALDOT is required to maintain compliance with Federal rules and regulations that govern public transportation. In maintaining compliance, ALDOT must ensure compliance by its subrecipients. ALDOT's Procurement Procedures manual provides the standard for compliance for procurement. Any serious compliance issues will be discussed with the ALDOT Procurement Office, located in the Equipment Bureau, and the ALDOT Legal Counsel.

II. AUTHORIZATION & ADMINISTRATIVE STANDARDS

A. Adoption of Procurement Procedures

- * As a recipient of federal transit funds, whether directly or as a subrecipient, the Baldwin County Commission is required to adopt and follow procurement standards, policies, and procedures that ensure procurement activities follow all applicable laws and regulations and promote free and open competition. In addition, the Baldwin County Commission must have a signature authority for FTA grants in its authority resolution.
- * The Baldwin County Commission initially adopted procurement standards, procedures, and policies on November 1, 2016. Subsequent updates to this document were approved on August 21, 2018 and again on January 18, 2022. (*Refer to Policy number 3.7 Baldwin County Purchasing Policies*).
- * For federal funds of which the Baldwin County Commission is a subrecipient of ALDOT, ALDOT is responsible for ensuring that all Federal procurement requirements are followed by the Baldwin County Commission. To show proof of a standardized process for procurements using FTA funding, ALDOT and the Baldwin County Commission must adopt and use their own procurement procedures (that reflect applicable Federal, State, and local laws and regulations). ALDOT must have written Procurement Procedures as a condition of self-certification. The Baldwin County Commission must have written Procurement Procedures as a condition of receiving Federal pass-through funding from ALDOT.
 - The Baldwin County Commission acknowledges that ALDOT's Procurement Procedures must be sufficient to confirm that all the information FTA requires for project administration is entered into the FTA's Transit Award Management System (TrAMS), so that it is readily available to FTA as needed.
 - The Baldwin County Commission and ALDOT must establish adequate written Procurement Procedures before any solicitation takes place. The procurements must conform to applicable Federal law, including the

requirements and standards identified in **Circular 4220.1 (series)**. Additionally, because ALDOT is a state agency, the written Procurement Procedures and the solicitations that take place must conform to Alabama procurement law, when consistent with Federal law. If Alabama law is stricter in relation to standards for cost thresholds or advertising guidelines, State law must be followed. However, Federal laws related to location preference in purchasing decisions and American made equipment must be followed to comply with the Federal aid rules.

B. Standards

Standards shall include but are not limited to:

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

C. Important Considerations

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

Analysis of Acquisitions to Identify, Evaluate, and Mitigate Potential Organizational Conflicts of Interest: Baldwin County Commission shall analyze each planned acquisition to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and to avoid, neutralize, or mitigate potential conflicts before contract award. Baldwin County Commission acknowledges that an organizational conflict of interest occurs when any of the following circumstances arise:

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

Employee Standards of Conduct: Baldwin County Commission is required to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts supported by Federal funds. Baldwin County Commission adopted these written standards of conduct on August 21, 2018, Baldwin County Commission Policy #3.7 Purchasing Policies.

Baldwin County Commission employees are also subject to the requirements of the Alabama Ethics Commission.

The employee standards of conduct address the following:

- * Preclude any employee, officer, or agent or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the election, award, or administration of a contract supported with FTA assistance
- * State that the Baldwin County Commission officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value [above nominal intrinsic value or except as allowed by applicable laws, rules and regulations] from contractors, potential contractors, or parties to sub-agreements
- * Provide for penalties, sanctions, or other disciplinary action for violation of such standards by the Baldwin County Commission officers, employees, agents, or by contractors to the extent permitted by state or local law or regulations.

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

III. METHODS OF PROCUREMENT

A. Introduction

When considering the type of procurement necessary for a product or service, there are some elements of the purchase that will assist in identifying the type of procurement to use:

- Total cost of the procurement: Requirements related to advertisement and submission are often based on the estimated cost of the procurement.
- Type of product or service being procured: Procurements for a professional service (such as architectural plans), construction of a transit facility, a prefabricated bus shelter, a small order of T-shirts, a medium-duty vehicle, and office cleaning services all have specific elements that shape the solicitation.
- Type of funding used: Projects that include FTA funds must follow Federal procurement rules. If the funding passes through ALDOT, State procurement rules must be followed unless no State funds are used or unless those rules conflict with FTA to the extent that the FTA rules cannot be followed. If there are specific matching funds that are used that have procurement stipulations, those requirements must also be considered. Finally, the processes and requirements of the Baldwin County Commission must be followed.

B. Procurements by Cost

When purchasing products or non-professional services, the essential factor in determining how to solicit for these projects properly is based on price. The first step in this process is getting an Independent Cost Estimate (ICE). The independent cost estimate is a tool to assist in determining the reasonableness or unreasonableness of the bid or proposal being evaluated and is required for projects that are presumed to have a higher total cost than the micro-purchase threshold. The Baldwin County Commission will obtain an ICE prior to publishing the procurement or soliciting vendors. Examples of methods for obtaining an ICE are from a like-kind vendor, another public agency, or a catalogue showing the product. The ICE must document the date of the estimate and the individual who developed it. The ICE must be retained in the procurement file. An ICE received from a vendor will eliminate that vendor from participating in that procurement.

In addition to an ICE, a Cost and Price Analysis is required for all procurements over \$10,000, based on Alabama State requirements. This process is conducted after competitive bids have been received. Using the ICE, the Baldwin County Commission will conduct a price analysis that

includes the review of specific budget items to determine if the product is consistent with prices offered by other vendors. A Cost Analysis is used in situation when a price analysis cannot be used. This includes the procurement of professional services. In a Cost Analysis, the Baldwin County Commission reviews proposed costs and uses judgement to determine how well the proposal represents the true cost to do the project.

Project costs must conform to applicable Federal cost principles [set forth in the Federal Acquisition Regulation (FAR), 48 CFR part 31] for allowable costs <https://ecfr.federalregister.gov/current/title-48/chapter-1/subchapter-E/part-31>. In general, costs must be necessary and reasonable, allocable to the project, and either authorized or not prohibited by Federal law or regulation. Change order costs must also comply with Federal cost principles.

The Baldwin County Commission will maintain documentation on the award of projects. This includes but is not limited to:

- An ICE completed prior to solicitation
- A cost and price analysis (if required)
- Contractor selection decision
- Rationale for the selected contractor

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

**This standard is consistent with Federal limits.*

Although micro-purchases may be made without obtaining competitive quotations, Baldwin County shall document in the procurement file how the price was identified as fair and reasonable. Methods for determining a reasonable price include: recent purchases made by Baldwin County, prices published by vendors in catalogues, and prices offered by local stores. Baldwin County shall not divide or reduce the size of its procurement in order to come within the micro-purchase limit.

Micro-purchases are exempt from the FTA's Buy America Requirements. Davis-Bacon prevailing wage requirements will apply for construction agreements exceeding \$2,000.

2. Small Purchases (more than \$10,000 and less than \$15,000)**

***This standard is consistent with State limits, which are stricter than Federal limits.*

Small purchase procedures require that price or rate quotations be obtained from at least two qualified sources and a price and Cost Analysis. ALDOT reviews all solicitation documents to

confirm that procurements exceeding micro-purchase thresholds are properly federalized. Prior ALDOT approval is required for all procurements exceeding micro-purchase thresholds. The solicitations and quotations may be either oral or written and must be documented.

3. Sealed Bids/Invitation for Bid (IFB) (over \$15,000)**

***This standard is consistent with State limits, which are stricter than Federal limits.*

A procurement of over \$15,000 requires that Baldwin County receive responses in the form of Sealed Bids. A Sealed Bid includes all paperwork associated with the cost estimate in a sealed envelope or box. If mailed, this sealed envelope or box should be inside another envelope or box so that the seal is not broken prior to the bid opening.

In a Sealed Bid process, the project is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price. Sealed Bids are appropriate for acquiring property, construction, and other services. Sealed Bid procurements should be used when a complete, adequate, precise, and realistic specification or purchase description is available, and two or more responsible bidders are willing and able to compete effectively for the business.

Clear, Accurate, and Complete Specifications: Invitations for Bid issued by Baldwin County shall provide a clear, accurate, and complete description of the technical requirements for the material, product, or service to be procured. Complete and accurate specifications are required to confirm that all potential bidders are given equal knowledge of the requirements.

Advertising: In accordance with Alabama State law and Federal requirements, invitations for bid must be posted publicly and advertised. The invitation for bids must be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids. Each solicitation must be advertised at a minimum three (3) consecutive times. For example, if the newspaper in the city where the project is located publishes once per week, the invitation for bids should be advertised for three weeks in the newspaper.

Sufficient Time Allowed to Prepare Bid: Baldwin County shall allow potential bidders sufficient time to prepare bids prior to the date set for the bid opening.

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

Award to Responsible Contractors: Baldwin County shall make FTA-assisted contract awards only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the proposed procurement. Responsibility is a

procurement issue that is determined after receiving bids or proposals and before making an award. The prospective contractor will demonstrate affirmatively that it qualifies as “responsible” under the standards of 49 USC Section 5325(j), and that its proposed subcontractors (if any) also qualify as “responsible.”

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

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

Firm Fixed Price and Selection on Price: Bidders will provide a firm fixed price which will be stated in the agreement; the selection of the successful bidder will be made principally based on price.

Discussions Unnecessary: Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors as well as a fully responsive proposal and previous performance. However, a pre-bid conference with prospective bidders before bids have been received can be useful but is not mandatory.

Rejecting Bids: Any or all bids may be rejected if there is a sound documented business reason. Reasons for possible bid rejection include, but are not limited to, lack of responsiveness to the solicitation and lack of responsibility of the bidder.

Concurrence and Approval by Funding Authority: With all bids over \$15,000, ALDOT/FTA staff must review and approve the solicitation. After the opening of the Sealed Bids and selection by Baldwin County, the bids shall then be sent to ALDOT/FTA for concurrence with the Baldwin County’s selection. After concurrence, Baldwin County may proceed with developing a contract agreement. ALDOT/FTA will review the agreement between Baldwin County and the contractor

to ensure that all required clauses and provisions are included. ALDOT/FTA exercises the right of Final Approval.

These agreements shall contain all provisions required by State and Federal law. Requirements flow down to all third-party contractors and their contract agreements at every tier. All relevant clauses contained in **FTA Circular 4220.1 (series)** and the current Master Agreement shall be copied into transit agency's subcontracts.

The Baldwin County Commission must be prepared to monitor the successful contractor for compliance with these requirements. Additionally, the solicitation document and resulting agreement shall include "performance measures" by which the transit agency can judge the contractor's fulfillment of the contract agreement requirements. Non-performance penalties/remedies are another topic to consider.

Such agreements often include clauses for renewal. Sound business practice dictates that before exercising such options, transit agencies shall consider the contractor's performance and if the terms, conditions, and price are still favorable to the agency.

Termination for cause and termination for convenience provisions must be included in agreements exceeding \$10,000. The Termination clause flows down to all third-party contractors and their agreements at every tier. Termination may be for convenience or for default (breach or cause). This clause must describe the manner causing the termination and the basis for settlement.

C. Competitive Proposals/Request for Proposals (RFP)

While many projects can be procured on price and submittal completion alone, there are some procurements that require other considerations. Competitive Proposals/RFPs allow subrecipients to select based on a proposal and not on the low bid. Evaluation factors are identified and the relative importance that each has towards the award is clearly indicated. Separate discussions with individual proposer(s) are expected to be necessary after proposals are submitted.

Advertising / Soliciting Proposals from an Adequate Number of Sources: For procurements over \$15,000, the request for proposals must be publicly advertised and proposals must be solicited from an adequate number of known suppliers (qualified sources), providing them sufficient time to prepare proposals prior to the date set for opening the proposals. Each solicitation must be advertised at a minimum three (3) consecutive times.

D. Sole Source

Sole source procurement (purchasing directly without competition) is not permissible unless there is only a single supplier or extenuating circumstances. The following are examples of circumstances which could require sole source procurement:

- * When there is a public emergency that will not permit delays from a traditional procurement process.
- * When the agency's need for the supplies or services is unusually urgent that the agency would be seriously impeded by waiting for a traditional procurement process.
- * When the compatibility of equipment, accessories, or parts is the paramount consideration.
- * Where a sole supplier's item is needed for trial use or testing.
- * When it is an upgrade to proprietary software or hardware.
- * When the item is one of a kind or only available from a single source. In this case, unique availability or capability must be documented.
- * When only one bid is submitted. The agency must provide proof that there is inadequate competition.

When only one bid is submitted that meets the requirements of the procurement and is consistent with a price analysis, documentation of the process must be provided to ALDOT/FTA to allow a sole source contract agreement. This documentation includes:

- * Proof of advertising to agencies that provide similar services.
- * Review of specifications to determine if there was undue restrictiveness.
- * Survey of potential bidders who chose not to bid.

Regardless of the justification for proceeding with a sole source contract agreement, Baldwin County Commission shall obtain a proposal from the contractor and perform the requisite Cost Analysis to confirm the cost is fair and reasonable. All documentation of the sole source shall be retained in the procurement file.

Sole Source if Other Award is Infeasible: If the Baldwin County Commission requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the Commission may make a sole source award (with ALDOT/FTA pre-approval). A capital maintenance item purchased directly from the original manufacturer or supplier of the item to be replaced may qualify if the manufacturer or supplier is the only

source for the item and the price of the item is no higher than the price paid by like customers.

Sole Source Cost Analysis: A Cost Analysis is required when the offeror submits elements (labor hours, overhead, materials, etc.), when there is only a sole source available, or when an order is changed. The Baldwin County Commission is also expected to obtain a cost analysis when price competition is inadequate (when only a sole source is available), even if the procurement is a contract agreement modification or a change order. The Baldwin County Commission will not need to obtain a Cost Analysis where price reasonableness of the proposed agreement can be justified based on a catalog or market price of a commercial product sold in large quantities to the general public, or where law or regulation has established the price.

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

Subrecipient Written Request and Funding Authority Pre-Approval Required: The Baldwin County Commission shall prepare and submit the *Sole Source Documentation Form* (included as Exhibit 4) requesting a sole source procurement (along with supporting documentation) to the applicable funding authority for review and concurrence. ALDOT/FTA will then determine whether the proposed procurement shall be made as a sole source.

Out of Scope Changes: An “out of scope” or “beyond scope” change is defined as a contract agreement change that is not within the scope of the original agreement. This type of change is considered a sole source procurement. Therefore, the Baldwin County Commission must justify why an amendment was the only feasible course of action and must comply with ALDOT/FTA requirements for Cost Analysis and profit negotiation.

When a Sole Source situation arises, Baldwin County Commission will prepare the ***Sole Source Documentation Form*** (included as **Exhibit 4**) requesting a sole source procurement, along with supporting documentation, and submit these items to the applicable funding authority for review and concurrence. The final determination as to whether a procurement shall be made as a sole source will then be made by ALDOT/FTA.

E. Emergency

The Baldwin County Commission acknowledges that purchases of this nature can be made only if a condition is present that creates a threat to public health, welfare, financial crisis, or safety under emergency conditions. ALDOT/FTA shall make the final determination as to whether a purchase falls under these parameters.

Note: If there is an emergency after normal working hours, the highest-level employee who is directly involved in the emergency shall seek as much competition as is practical to alleviate the emergency. Baldwin County Commission will then contact ALDOT/FTA the next business day.

F. Revenue Agreements

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

G. Prequalification in Real Property and Other Solicitations

Baldwin County Commission may choose to prequalify people, firms, or products for participation in procurement. If a pre-qualification process is utilized the following shall be true:

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

H. Purchase off Open Bids from Other Agencies (Assigned Contract Rights)

Assigned Contract Rights, often called “piggybacking,” is a practice that allows an organization to acquire contract options through an open contract agreement from another organization. No piggybacking is allowed for projects using Federal funding.

I. Joint Procurement

Joint procurements occur when two or more grantees issue a single solicitation and enter a single agreement with a vendor for a specific number of units. Participants in a joint procurement share responsibility for the process and development of procurement materials. Each participant has the right to take part in the evaluation and selection of a vendor. Participants in a joint procurement may issue separate agreements with the vendor, so long as the agreement includes the terms and conditions of the joint procurement.

IV. SPECIFIC PROCUREMENTS

The Baldwin County Commission acknowledges that there are specific types of procurements that have processes that must be followed. The Baldwin County Commission further acknowledges that not following the required steps, not seeking FTA/ALDOT consultation and approval, or not maintaining appropriate documentation could result in consequences from the FTA/ALDOT, including denial of requests for reimbursement of Federal funds.

A. Rolling Stock

For federal funds of which the Baldwin County Commission is a subrecipient of ALDOT, ALDOT orders all new vehicles for its subrecipients, including the Baldwin County Commission, through a process called State Cooperative Purchasing Contracts. The Baldwin County Commission is not allowed to purchase new vehicles directly with Sections 5310, 5311, and 5339 funds unless approved by ALDOT. A five (5) year limit for exercise of options applies to the purchase of buses or replacement parts. ALDOT may not acquire bus or replacement parts after the five (5) year period. This promotes competition and effective contract management.

B. Real Property

Special requirements pertain to the purchase of real property. FTA Circular 5010.1 (series) covers the acquisition of real property. (Note: Where ALDOT is the designated recipient of funds—as in the Section 5311 Formula Grants for Rural Areas Program—all direct contact with FTA flows through the ALDOT Transit Section). Chapter 12 of the State Management Plan, “Construction or Renovation of Facilities” provides details on ALDOT policies. Unlike other assets (rolling stock, shelters, improvements to property), real property procured using Federal funding has useful life in perpetuity, meaning that the Federal interest stays with the property forever. Sale of the property requires a repayment of the Federal interest.

Pre-Award Review: At no time will Baldwin County Commission fund the acquisition of land for transit facilities not provided for under the scope of an approved grant. All construction or real property acquisition-related activities **over \$10,000 shall require pre-award review and approval** by ALDOT/FTA before commencing work. The pre-award review includes the items listed in the next section (Prerequisites for Project Funding). **No purchase of property should commence before written approval by ALDOT/FTA.**

Prerequisites for Project Funding: Baldwin County Commission will prepare the following documents for ALDOT/FTA for review and concurrence prior to funding commitment:

- * National Environmental Policy Act (NEPA) Approval
- * Equity Analysis
- * Title Search
- * Appraisal
- * Appraisal Review
- * Just Compensation Determination
- * ALDOT Concurrence
- * Offer to Owner
- * Settlement

Site Selection Analysis: An environmental review is required for the purchase of property, new construction or renovation of a building that is purchased. All proposed project sites must be evaluated and assessed to determine impact, if any, on wetlands, streams, high biotic potential, livable communities' considerations, and federally protected, threatened or endangered species and their habitats. A consulting firm may be used to determine if there are any environmental issues that need to be addressed prior to construction.

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

The Baldwin County Commission acknowledges that an environmental review must be completed, and FTA's approval received, prior to committing federal funds. Federal funds will not be made available for any facility purchase or construction until the environmental documents are reviewed and approved by FTA.

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

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

If the property has already been purchased by the Baldwin County Commission and an environmental review or study has been completed, these document(s) must be submitted to ALDOT/FTA for review and subsequent federal approval.

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

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

Purchase and Titling: Baldwin County Commission, not its contractor, must be the recorded owner of real property purchased with funds provided by ALDOT/FTA.

The Baldwin County Commission shall utilize the services of a titling company when purchasing real property to ensure that a clean title is received. Using a titling company also ensures that ALDOT/FTA has a valid lien against the property. The latter occurs when the Baldwin County Commission signs a deed of trust in favor of ALDOT/FTA.

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

C. Procurement of Architectural and Engineering Services

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

Prior to selecting an architect or engineer, a "Request for Qualifications" shall be prepared and submitted to ALDOT/FTA for review and approval. After approval by ALDOT/FTA, the Request for Qualifications shall be advertised in a publication with national circulation. Alternatively, Baldwin County Commission may compile a central bidders list from discussions with other agencies that have awarded contracts for similar work.

Upon receipt of various statements of qualifications, the prospective bidders are ranked and the ranking list is submitted to ALDOT/FTA for approval. Following ALDOT/FTA's approval, price negotiations may begin with the top ranked candidate.

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

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

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

On-Call Contracts: A&E services must be procured using a qualifications-based process in accordance with the Brooks Act. However, the Baldwin County Commission may use on-call agreements for work that would be too expensive (administratively) to procure individually. The definition of work that is too expensive to procure individually shall be identified and documented by the Baldwin County Commission. The Baldwin County Commission acknowledges that it must prequalify consultants through a process that describes the type and total estimated price of potential contracting opportunities during the prequalified period. Consultants can then be selected from the prequalified list. The Baldwin County Commission also acknowledges that there shall be a finite period for these contract awards, after which a new round of qualifications-based awards will be made.

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

D. Procurement and Award of Construction Services

Construction services are often associated with the development of a transit facility. There are a few options for phasing design and construction services:

- ***Design-Bid-Build:*** In this contract agreement method, the Baldwin County Commission, subject to ALDOT/FTA pre-approval, commissions an architect or engineer to prepare drawings and specifications under a design services agreement, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project. The design-bid-build procurement method requires separate agreements for design services and for construction.

Design Services. For design services, the Baldwin County Commission must use qualifications-based procurement procedures, in compliance with applicable Federal,

State, and local law and regulations.

Construction. Because the Baldwin County Commission may not use qualifications-based procurement procedures for the actual construction, alteration, or repair of real property, it generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods.

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

When contracting for construction services, there are options for how to structure the agreement and payment.

- **Time and Materials Agreements:** The Baldwin County Commission is permitted to use time and materials agreements only: (1) after determining that no other type of agreement is suitable; and (2) if the agreement specifies a ceiling price that the contractor will not exceed except at its own risk. FTA considers this type of agreement to be the least preferable of all allowable agreement types because it creates a disincentive for the contractor to complete the agreement in a timely manner.
- **Cost Plus a Percentage of Cost and Percentage of Construction Cost Agreements Prohibited:** Federal law prohibits the use of cost plus a percentage of cost (CPPC) and percentage of construction cost methods of contracting.

Depending on the cost of construction, bonding requirements must be included during the procurement process that protect the Federal interest in the project.

- **Bid Guarantee (Construction over \$250,000):** Bonds are required for all construction agreements exceeding the Simplified Acquisition Threshold, currently set at \$250,000, unless FTA determines that other arrangements adequately protect the Federal interest. Each bidder is generally required to provide a bid guarantee equivalent to 5 percent of its bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
- **Performance Bond (Construction over \$250,000):** Bonds are required for all construction agreements exceeding the Simplified Acquisition Threshold, currently set at \$250,000, unless FTA determines that other arrangements adequately protect the Federal interest. Contractors generally must obtain a performance bond for 100 percent of the agreement price. A performance bond is obtained to ensure completion of the obligations under the third-party agreement.

- **Payment Bond (Construction over \$250,000):** Bonds are required for all construction agreements exceeding the Simplified Acquisition Threshold, currently set at \$250,000, unless FTA determines that other arrangements adequately protect the Federal interest. Contractors generally must obtain a standard payment bond. A payment bond is obtained to ensure that the contractor will pay all people supplying labor and material for the third-party agreement as required by law. FTA has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:
 - Less Than \$1 Million: Fifty percent of the agreement price if the agreement price is not more than \$1 million
 - More Than \$1 Million but Less Than \$5 Million: Forty percent of the agreement price if the agreement price is more than \$1 million but not more than \$5 million
 - More Than \$5 Million: Two and one half million dollars if the agreement price is more than \$5 million
- **Liquidated Damages:** The Baldwin County Commission (with ALDOT/FTA pre-approval) may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine. In addition, the assessment for damages shall be at a specific rate per day for each day of the overrun in contract time. The rate must be pre-determined and specified in the third-party agreement. FTA expects the Baldwin County Commission to credit any liquidated damages recovered to the project unless FTA permits another use of the liquidated damages.

In addition to bonding, the following Federal provisions must be included in construction agreements:

- **Seismic Safety:** Agreements for construction of new buildings or improvements to existing buildings must include seismic safety provisions as required by the Earthquake Hazards Reduction Act of 1977.
- **Equal Employment Opportunity:** All third-party construction agreements must include provisions ensuring compliance with Department of Labor Equality Opportunity provisions.
- **Prevailing Wages (Davis-Bacon Act):** Third-party construction agreements that exceed \$2,000 must include Davis-Bacon provisions. The Davis-Bacon Act requires that contractors pay wages at a rate that is no less than the wage determination by the Secretary of Labor. Additionally, contractors must pay wages not less than once per week.
- **Anti-Kickback:** Third-party construction agreements that exceed \$2,000 must

include provisions consistent with the Copeland “Anti-Kickback” Act, which prohibits anyone employed on construction projects from giving up any portion of compensation to which they are entitled. Contractors must keep records of wage payments.

- **Contract Work Hours and Construction Safety:** Third-party construction agreements that exceed \$100,000 must include provisions for compliance with Contract Work Hours and Construction Safety. Under this provision, contractors are required to compute wages for laborers based on a standard 40-hour work week. Additionally, contractors are required to comply with Federal provisions that require that no laborer must be required to work in conditions that are unsanitary, hazardous, or dangerous.
- **Labor Neutrality:** Third-party construction agreements must include a project labor agreement (PLA). A PLA is a pre-hire agreement for collective bargaining between the agency and one or more labor organizations. This agreement establishes the terms and conditions of employment for the specific project.
- **Buy America:** Third-party construction agreements must include provisions stating that steel, iron, and manufactured products used on the project will be produced in the United States.
- **Accessibility:** Third-party construction agreements must include a provision that states that the project will be constructed in compliance with the Americans with Disabilities Act and Joint Access Board/DOT provisions. During construction, the facilities that are currently used for the provision of public transportation (and will be in use during construction) must be accessible and useable by individuals with disabilities.

Pre-Construction Meeting: Once the project is awarded, the awarding agency will work with a team that includes ALDOT/FTA, the contractor, and the architect to bring the project to completion. A pre-construction meeting must be held between the Baldwin County Commission, the construction company, and the architect or overseer of the construction phase. Knowledgeable ALDOT/FTA staff shall also attend. The agenda for the meeting shall include:

- * Construction milestones
- * Billing processes
- * Contingencies

Transportation Facility Accessibility (Public Agencies): In accordance with applicable laws, rules and regulations, the Baldwin County Commission acknowledges that public entities constructing new facilities or altering existing facilities to be used for the provision of public transportation service must make the facility or alterations readily accessible to and useable by individuals with

disabilities. The facility accessibility regulations are contained in (49 CFR Part 37). Appendix D to Part 37.215 contains an explanation of the regulations.

Transportation Facility Accessibility (Private Entities): The Baldwin County Commission acknowledges that private entities must comply with the regulations of the Department of Justice that implement Title III of the Americans with Disabilities Act in constructing and altering transit facilities (49 CFR Part 28).

V. FEDERAL PROVISIONS

The following provisions that have been identified in previous sections relate to when funding can be made available, the types of products that can be procured, and other processes that are essential to the procurement process. This section will detail these provisions.

A. Simple Acquisition Threshold

The Super Circular (2 CFR Part 200) increased the simplified acquisition threshold to \$250,000 (per 2 CFR 200.88) to bring it into alignment with the Federal Acquisition Regulation (FAR). This new threshold applies to procurements funded by grants issued on or after December 26, 2014. Procurements funded by grants issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 49 CFR 18.36(d)). The \$250,000 threshold will be adjusted periodically for inflation. FTA will continue to base the exemption on the total amount of the project and not on the individual price of items being purchased.

Disputes/Breach Clause: All agreements more than the Simplified Acquisition Threshold (currently set at \$250,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for appropriate sanctions and penalties. The Violations and Breach of Contracts clause flows down to all third-party contractors and their agreements at every tier. The Baldwin County Commission will notify FTA of any disputes involving third party agreements with a value more than the Simplified Acquisition Threshold (currently set at \$250,000) providing such details as FTA may require. FTA encourages alternative dispute resolution procedures where appropriate.

B. Buy America

As described in the State Management Plan, ALDOT orders all new vehicles for its subrecipients, including the Baldwin County Commission. The Baldwin County Commission is not allowed to purchase new vehicles directly with Sections 5310, 5311, and 5339 funds unless approved by ALDOT. Therefore, ALDOT must confirm that pre-award audits and post-delivery audits are conducted in accordance with the FTA's Buy America regulations at: <https://www.transit.dot.gov/>.

Buy America also applies to third party construction agreements exceeding the Federal Simplified Acquisition Threshold (currently \$250,000 as set by 2 CFR Part 200). FTA advised in Circular 4220.1 (series) that its Buy America regulations are complex; therefore, the Baldwin County Commission may need to request Buy America guidance from FTA before proceeding with construction work.

C. Environmental and Energy Efficiency Preference

As a recipient of Federal transit funds, the Baldwin County Commission is required by FTA to have written procurement procedures that have a preference in procurement, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient. Therefore, the Baldwin County Commission will consider environmental sustainability and energy efficiency when developing specifications for rolling stock and construction. The Baldwin County Commission is also encouraged by FTA to have recycling programs for cardboard, mixed office paper, and other materials as appropriate.

D. Exercise of Options

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

E. Geographical Preferences

The Baldwin County Commission is prohibited from specifying in-state or local geographical preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. However, there are several exceptions, as follows:

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

F. Procedures for the Most Efficient and Economic Purchase (Including Lease versus Purchase Analysis)

The Baldwin County Commission must review proposed procurements to avoid purchase of unnecessary or duplicative items. Strategies to encourage an economic purchase could include breaking out or combining purchases or using annual agreements and performing a lease versus buy analysis.

G. Prohibited Procedures

- * **Progress Payments by ALDOT:** FTA may allow the Baldwin County Commission to make progress payments under certain carefully documented circumstances. ALDOT, however, does not make progress payments or permit its subrecipients, including the Baldwin Commission, to make progress payments.
- * **Tag-On (Cardinal Change):** A significant change in agreement work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original agreement, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.” Cardinal changes (“tag-ons”) are prohibited by FTA. A change within the scope of the agreement (sometimes referred to as an “in-scope” change) is not a “tag-on” or cardinal change.
- * **Advance Payments:** Advance payments are payments made to a contractor by ALDOT or the Baldwin County Commission before the contractor incurs contract costs. FTA does not authorize and will not participate in advance payments; therefore, ALDOT does not permit its subrecipients, including the Baldwin County Commission, to make advance payments.

H. State or Local Government Purchasing Schedules or Purchasing Agreements

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 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 like the General Services Administration’s (GSA) Cooperative Purchasing Program available for Federal Government use. If the State or local government wishes to permit others to use its schedules, the State or local government can seek the agreement of the vendor to provide the listed property or services to others with access to the

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

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

I. Veterans Preference/Employment

The Baldwin County Commission shall confirm that contractors working on an FTA-funded capital projects give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the agreement. This hiring preference shall not be understood, construed, or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

VI. BID PROTESTS/APPEALS

Baldwin County Commission acknowledges that it is responsible for maintaining written protest procedures to handle and resolve disputes relating to its procurement and shall in all instances disclose protests to ALDOT/FTA and keep ALDOT/FTA informed about the status of the protest protest decisions must be in writing. A protester must exhaust all administrative remedies with the Baldwin County Commission before pursuing a protest with ALDOT/FTA.

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

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

agreement.

- **Post-award protest** is a protest received after award of a contract agreement.

The Baldwin County Commission is responsible for settling disputes resulting from any procurement action. Under limited circumstances, a bidder may protest to ALDOT/FTA a vendor's award of an agreement. In all instances, information regarding protests must be disclosed to ALDOT/FTA and ALDOT/FTA must be kept informed about the status of each protest.

For federal funds of which the Baldwin County Commission is a subrecipient of ALDOT, ALDOT's Transportation Planning and Modal Programs Bureau's role in a bid protest shall be limited to the conditions set forth in **FTA Circular 4220.1 (series)**.

VII. POST AGREEMENT CONSIDERATIONS

A project is in the Federal interest for the entity of its useful life. This means that Federal provisions must be complied with in the operation of the project. The ALDOT State Management Plan describes these provisions which include the use of the facility, use of program income, and compliance with ADA.

VIII. MONITORING

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

The ALDOT Transit Section's monitoring of procurement takes place in two (2) different time frames. The Procurement Checklist Form (Exhibit 5) and other documentation activities are tied to the specific purchase of an asset, piece of equipment, or service. This information is retained in the Transit Section office.

A. Transit Compliance Review

For federal funds of which the Baldwin County Commission is a subrecipient of ALDOT, an annual transit agency compliance review will be performed. During the annual transit agency compliance review, the monitor will look at policies and procedures the Baldwin County Commission used to guide its procurements, as well as the written history documentation Baldwin County Commission maintains on-site.

- 1) The Baldwin County Commission is required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving States and other public entities), and Baldwin County Commission agreements (contracts). The current version of the FTA Master Agreement identifies certain clauses that apply to third party agreements.
- 2) The Baldwin County Commission acknowledges that agreements may not be modified after award to include Federal clauses and so make them eligible for procuring goods and services with Federal funds. However, state/GSA-type agreements may be modified to add Federal clauses when purchase orders are issued against those state agreements. **Not all clauses apply to every agreement.** The applicability of clauses depends on the size and type of agreement.
- 3) The Baldwin County Commission acknowledges that procurements above the micro-purchase threshold (\$10,000) must include all applicable FTA clauses as part of the solicitation, purchase order, or agreement. **A general reference to FTA guidelines is not sufficient to meet this requirement.**
- 4) The Baldwin County Commission acknowledges that procurement transactions must be in a manner providing full and open competition. The Baldwin County Commission acknowledges that it is prohibited from restricting competition in Federally supported procurement transactions. Some situations that restrict competition include, but are not limited to:
 - a. Unreasonable qualification requirements
 - b. Unnecessary experience requirements
 - c. Excessive bonding
 - d. Noncompetitive pricing practices between firms
 - e. Noncompetitive awards to firms on retainer
 - f. Organizational conflicts of interest
 - g. "Brand name" only specifications
 - h. Any arbitrary action in the procurement process

- 5) The Baldwin County Commission acknowledges that Requests-for-Proposal (RFPs) shall identify all significant evaluation factors, including price or cost where required, and their relative importance.
- 6) The Baldwin County Commission shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offers for the purpose of written or oral discussions, and selection for contract agreement award.
- 7) The Baldwin County Commission acknowledges that it is required to ensure to the best of its knowledge and belief that none of its principals, affiliates, vendors, or third-party contractors is suspended, debarred, ineligible, or voluntarily excluded from participation (receiving funding) in Federally assisted transactions or procurements. FTA and ALDOT require review of the System for Award Management (SAM) website before entering into any third-party contract expected to equal or exceed \$25,000. Baldwin County Commission will therefore print the screen with the results of the System for Award Management (SAM) website search and include it in the grant or procurement file.
- 8) The Baldwin County Commission acknowledges that as a direct FTA recipient for grants, grant amendments, and cooperative agreements over \$25,000 is subject to the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA). Direct FTA recipients must report information about each first tier subaward over \$25,000 (funds passed through to other public agencies, private nonprofit organizations or, where eligible as subrecipients, private providers of transportation) by the end of the month following the month the direct recipient makes any subaward or obligation (not the month after FTA awarded the direct grant.) The public may view FFATA information at: www.USASpending.gov

IX. RECORD RETENTION

The Baldwin County Commission shall retain financial records, supporting documents, and other records pertinent to all applicable agreements in compliance with ALDOT/FTA's record retention requirements unless the Baldwin County Commission policy is stricter. The Baldwin County Commission must maintain records that detail the significant history of a procurement, to include the following:

- * Rationale for the method of procurement (e.g. request for proposal, sole source)
- * Selection of agreement type (e.g. fixed price)

- * Reason for contractor selection or rejection
- * Basis for the agreement price (e.g. cost/price analysis)

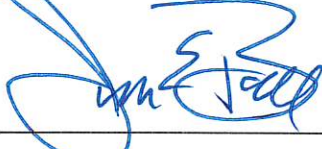
The Baldwin County Commission acknowledges that it must retain documentation for three (3) years:

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

X. ADOPTION OF PROCUREMENT PROCEDURES

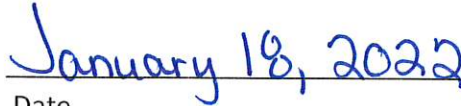
The Baldwin County Commission passed and adopted these **Procurement Procedures** on

the 18th day of January, 2022.



James E. Ball

Chairman, Baldwin County Commission



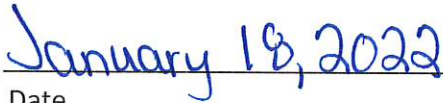
Date

ATTEST:



Wayne Dyess

County Administrator, Baldwin County Commission



Date



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

Example for Baldwin County Commission

(Date)

Independent Cost Estimate For Shop Equipment Item A

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

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

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

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

INDEPENDENT COST ESTIMATE

Sample - Modify this boilerplate as necessary to suit the item and then delete this line

[Date]

Independent Cost Estimate For [Add Description]

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

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

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

Therefore, we believe that Baldwin County Commission will be able to find the required [Describe Item] for the price range of [\$low price - high price];. Standard installation [is or is not applicable] and [will or will not] need to be included.

XII. EXHIBIT 2: PRICE ANALYSIS (EXAMPLE ONLY)

XYZ TRANSIT SYSTEM

Price Analysis for Shop Equipment Item A

Form of Price Analysis used:

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

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

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

Summary:

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

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

Company Name #1 - \$3,218

Company Name #2 - \$3,345

Company Name #3 - \$3,882

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

Signature

Title

Date

XIII. EXHIBIT 3: COST ANALYSIS FOR A & E

Baldwin County Commission

Cost Analysis

for

Architecture & Engineering's Services for Transit Facility Renovations

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

- (1) Actual costs previously incurred.

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

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

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

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

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

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

Summary:

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

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

Signature- Transit Agency Name

Title - Transit Agency Name

Date

XIV. EXHIBIT 4: SOLE SOURCE DOCUMENTATION FORM

SOLE SOURCE DOCUMENTATION FORM

DATE: _____ P.O. OR REQUISITION NUMBER: _____

VENDOR: _____ TOTAL COST: _____

DEPARTMENT/DIV: _____ REQUISITIONER: _____

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

Briefly describe the scope of services or equipment needed.

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

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

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

(USE ADDITIONAL PAPER IF NECESSARY)

DEPARTMENT HEAD NAME, PRINTED: _____

Department Head Signature: _____ Date: _____

SOLE SOURCE PROCUREMENT POLICY

Definition

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

Application

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

Conditions for Use of Sole Source Procurement

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

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

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

Negotiation in Sole Source Procurement

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

XV. EXHIBIT 5: PROCUREMENT CHECKLIST FORM

Revision Date: 01/04/2022

Agency: <u>Baldwin County Commission</u>	☐ 5311	☐ 5307	
Purchase Request: ☐ Equipment ☐ Supplies ☐ Services			
Item(s): _____			
Estimated Total Cost: _____			
Describe Purpose: _____			

- | | | | |
|---|---------------------------------|--------------------------------|---------------------------------|
| I. <u>\$10,000 or less – (at least two written quotes required)</u> | YES
☐ | NO
☐ | N/A
☐ |
| 1. Written documentation of agency/organization's informal | | | |
| 2. procurement methods | | | |
| 3. Copy of the price or rate quote | ☐ | ☐ | ☐ |
| 4. Fair and reasonable price determination | ☐ | ☐ | ☐ |
| <hr/> | | | |
| II. <u>\$10,001 to \$15,000 – (at least two written quotes required)</u> | YES
☐ | NO
☐ | N/A
☐ |
| 1. Copy of written request to ALDOT/FTA to purchase equipment, property, supplies or services \$10,001 - \$15,000 | | | |
| A. Copy of Independent Cost Estimate (Prepared prior to getting quotes) | ☐ | ☐ | ☐ |
| B. Copies of Quotes solicited from at least (2) two suppliers | ☐ | ☐ | ☐ |
| C. The quote clearly and accurately described the technical requirements | ☐ | ☐ | ☐ |
| D. The project has clearly set forth the requirements the vendor must fulfill | ☐ | ☐ | ☐ |
| E. The project has made positive efforts to utilize disadvantaged business enterprises | ☐ | ☐ | ☐ |
| F. Documentation of search on the System for Awards Management (SAM) to identify debarred or suspended bidders at www.SAM.gov or Debarment/Suspension Certification. | ☐ | ☐ | ☐ |
| 2. Copy of the cost breakdown for the proposed project | ☐ | ☐ | ☐ |
| 3. Copy of Cost Price Analysis or Cost Analysis (Prepared after receipt of Quotes) | ☐ | ☐ | ☐ |
| 4. Purchasing Schedule | ☐ | ☐ | ☐ |
| 5. Written notice to proceed (and recommendations) from ALDOT | ☐ | ☐ | ☐ |

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 6. Copy of ALDOT/FTA approval of the Third-Party Contract/Agreement (with required contract clauses, if applicable) | ☐ | ☐ | ☐ |
| 7. Written notice for processing changes in purchase orders to ALDOT/FTA | ☐ | ☐ | ☐ |
| 8. Required Federal Clauses and Certifications | ☐ | ☐ | ☐ |
| 9. Fair and reasonable price determination (Form) | ☐ | ☐ | ☐ |

III. \$15,001 and above (bid required)

- | | YES
☐ | NO
☐ | N/A
☐ |
|---|---------------------------------|--------------------------------|---------------------------------|
| 1. Copy of written request to ALDOT/FTA to purchase equipment, property, supplies or services \$15,001 and above which includes: | | | |
| A. Copy of Independent Cost Estimate (prepared prior to RFP/ITB release) | ☐ | ☐ | ☐ |
| B. Required Federal Clauses and Certifications | ☐ | ☐ | ☐ |
| C. Request for Proposal (RFP/ITB) Proposed purchase terms, conditions, technical specifications, and proof of bid advertisement(s) | ☐ | ☐ | ☐ |
| D. Sole Source (Single Source) Justification (if applicable) | ☐ | ☐ | ☐ |
| 2. Advertising for competitive bids once a week for (3)- consecutive weeks in a regular newspaper (published in the county or municipality in which such agency or governing authority is located and one National publication) | ☐ | ☐ | ☐ |
| A. Market Research Documents | ☐ | ☐ | ☐ |
| B. Bonds | | | |
| 1) Bid | ☐ | ☐ | ☐ |
| 2) Performance | ☐ | ☐ | ☐ |
| 3) Payment | ☐ | ☐ | ☐ |
| C. Bidders List, Solicitation and Amendments | ☐ | ☐ | ☐ |
| D. Pre-Solicitation Approvals | ☐ | ☐ | ☐ |
| E. Pre-Bid or Proposal Conference Notes and Questions and Answers (if applicable) | ☐ | ☐ | ☐ |
| F. Bids/Proposals and Solicitation Amendment Acknowledgements | ☐ | ☐ | ☐ |
| G. "No Bid" Letters or offeror Disqualification Correspondence | ☐ | ☐ | ☐ |
| H. Negotiation Memorandum (if applicable) | ☐ | ☐ | ☐ |
| I. Protests (if applicable) | ☐ | ☐ | ☐ |
| J. Copy of RFP evaluation of proposal | ☐ | ☐ | ☐ |

- | | | | |
|--|--------------------------|--------------------------|--------------------------|
| K. Copy of explanation of the basis for selection of contractor – including evaluation criteria and results of the subrecipient’s technical evaluation | ☐ | ☐ | ☐ |
| L. Copy of a list of all proposals received | ☐ | ☐ | ☐ |
| M. Copy of a cost breakdown for the proposed contract | ☐ | ☐ | ☐ |
| N. Copy of Cost Analysis (prepared after receipt of proposals) | ☐ | ☐ | ☐ |
| O. Copy of Price Analysis (prepared after receipt of proposals) | ☐ | ☐ | ☐ |
| P. Notice of Intent to Award | ☐ | ☐ | ☐ |
| Q. Procurement Plan and Timeline | ☐ | ☐ | ☐ |
| R. Responsibility Determination | ☐ | ☐ | ☐ |
| S. Fair and Reasonable Price Determination | ☐ | ☐ | ☐ |
| 3. Written notice to proceed (and recommendations) from ALDOT/FTA (prior to the execution of an agreement between the Baldwin County Commission and the selected bidder) | ☐ | ☐ | ☐ |
| A. Recommendation(s) made by the project as to bid award | ☐ | ☐ | ☐ |
| B. Documentation of search on the System for Awards Management (SAM) to identified debarred or suspended bidders at www.SAM.gov . | ☐ | ☐ | ☐ |
| C. Copies of the bids submitted along with any pertinent correspondence relating to exceptions to the approved specifications | ☐ | ☐ | ☐ |
| 4. Documentation of agency procedures for processing change orders in equipment purchased | ☐ | ☐ | ☐ |
| 5. Documentation/notice to ALDOT/FTA for change orders (that affect the contract price) | ☐ | ☐ | ☐ |
| 6. Copy of the Third-Party Contract/Agreement (with required federal contract clauses/certifications.) | ☐ | ☐ | ☐ |
| 7. “Buy America” certifications (if required) | ☐ | ☐ | ☐ |
| 8. Options (Pricing evaluated at time of award) | ☐ | ☐ | ☐ |
| 9. General Contract Correspondence | ☐ | ☐ | ☐ |
| 10. Contract Close-Out | ☐ | ☐ | ☐ |

XVI. EXHIBIT 6: PROCUREMENT CHECKLIST FORM Facility Construction Checklist - 5311 Sub-Recipient

BALDWIN COUNTY COMMISSION FACILITY CONSTRUCTION CHECKLIST

Agency: _____ Contact Person: _____ Agency: _____ Contact Person: _____ FTA Grant #: _____ ALDOT Project Agreement #: _____ Project Description: _____ _____		
	Scheduled Date	Actual Date
1.0 PROJECT AWARD PROCESS		
a. ALDOT Announcement		
b. Project Selection		
c. Subrecipient submits detailed scope of work for project review, and possible inclusion in project agreement		
d. Subrecipient forwards appraisal (land and/or building) based on fair market value (site plan, utilities, environmental plan, real estate acquisition) to OPT Regional Transit Manager		
e. Subrecipient submits environmental impact analysis documents to OPT Regional Transit Manager (Categorical Exclusion) for approval		
f. Subrecipient forwards proof of MATCH contribution documentation to OPT Regional Transit Manager		
g. Subrecipient submits verification of local match to OPT Regional Transit Manager		
h. Proof of ownership		
i. OPT prepares information for Commission approval		
2.0 AFTER COMMISSION APPROVES FUNDING ALLOCATION		
a. Project identified in the STIP for public comment		
b. Subrecipient submits cost estimates for the project to OPT Regional Transit Manager (broken-out by work type and/or phases)		
c. ALDOT submits grant application to FTA for approval		
d. If required, subrecipient submits more details of the project scope of work for inclusion in agreement		
e. OPT Regional Transit Manager forwards cost to DBE Office to establish DBE goal for the project		
f. ALDOT sets DBE goal for the project		
g. FTA approves the grant		
h. ALDOT project agreement prepared and forwarded to subrecipient for signature		
i. ALDOT fully executes project agreement with subrecipient, including agreement not to convey or encumber		

3.0 AFTER OPT RECEIVES SIGNED GRANT AGREEMENT			
3.1 Solicitation Process			
a.	Subrecipient submits Bid or RFQ (<i>if A/E is required</i>) documents to OPT Regional Transit Manager for review and concurrence		
b.	Subrecipient advertises solicitation		
c.	OPT Regional Transit Manager contacts DBE Office to assist with the dissemination of the bid information to qualified and certified DBEs (Good faith effort)		
d.	Subrecipient submits Force Accounting Plan (if using own workforce personnel). If \$10M > = approved by FTA, or \$100,000 < \$10M = maintain plan in file or < \$100,000 = no plan required		
e.	Subrecipient submits copies to OPT Regional Transit Manager of the solicitations received, including the selection process and justifications for concurrence		
f.	Subrecipient must comply with applicable provisions in the OSE manual concerning the selection of A/E exceeding \$25,000		
g.	OPT Regional Transit Manager attends the pre-construction conference with selected contractor prior to beginning the construction and/or renovation project		
3.2 ALDOT Reporting Requirements			
a.	Prominently display the "ARRA" decal at construction/renovation site (applicable only to ARRA funded projects)		
b.	Subrecipient must submit all required report to OPT Regional Transit Manager		
3.3 ALDOT Invoicing Process			
a.	Subrecipient submits the following items on form 600 to Finance Office:		
	1. Line Item invoice relating to project phases and tasks completed		
	2. Signed Milestone Report of the completed work - approved by local inspector		
	3. Photos for each phase of the completed work		
4.0 FINAL CLOSEOUT PROCESS			
a.	OPT Regional Transit Manager conducts final inspection		
b.	Subrecipient obtains certificate of occupancy from appropriate authority		
c.	Submit Facility Maintenance Plan to ALDOT for approval		
d.	Subrecipient submits final invoice for payment		
e.	ALDOT issues Close Out letter		
Regional Transit Manager: _____		Date: _____	
ALDOT Transit Manager: _____		Date: _____	

XVII. EXHIBIT 7: PROCUREMENT CHECKLIST FORM

Facility Construction Checklist - 5307 Direct Recipient

BALDWIN COUNTY COMMISSION FACILITY CONSTRUCTION CHECKLIST

Agency: _____ Contact Person: _____ Agency: _____ Contact Person: _____ FTA Grant #: _____ Project Description: _____ _____		
	Scheduled Date	Actual Date
1.0 PROJECT AWARD PROCESS		
a. Project Announcement		
b. Project Selection		
c. Subrecipient submits detailed scope of work for project review, and possible inclusion in project agreement		
d. Subrecipient forwards appraisal (land and/or building) based on fair market value (site plan, utilities, environmental plan, real estate acquisition) to Baldwin County Commission		
e. Subrecipient submits environmental impact analysis documents to Baldwin County Commission (Categorical Exclusion) for approval		
f. Subrecipient forwards proof of MATCH contribution documentation to Baldwin County Commission		
g. Subrecipient submits verification of local match to Baldwin County Commission		
h. Proof of ownership		
i. Baldwin County staff prepares information for Commission approval		
2.0 AFTER COMMISSION APPROVES FUNDING ALLOCATION		
a. Project identified in the STIP for public comment		
b. Subrecipient submits cost estimates for the project to Baldwin County Commission (broken-out by work type and/or phases)		
c. Baldwin County Commission submits grant application to FTA for approval		
d. If required, subrecipient submits more details of the project scope of work for inclusion in agreement		
e. Baldwin County Commission forwards cost to DBE Office to establish DBE goal for the project		
f. Baldwin County Commission sets DBE goal for the project		
g. FTA approves the grant		
h. Baldwin County Commission project agreement prepared and forwarded to subrecipient for signature		
i. Baldwin County Commission fully executes project agreement with subrecipient, including agreement not to convey or encumber		

3.0 AFTER OPT RECEIVES SIGNED GRANT AGREEMENT			
3.1 Solicitation Process			
a.	Subrecipient submits Bid or RFQ (<i>if A/E is required</i>) documents to Baldwin County Commission for review and concurrence		
b.	Subrecipient advertises solicitation		
c.	Baldwin County Commission contacts DBE Office to assist with the dissemination of the bid information to qualified and certified DBEs (Good faith effort)		
d.	Subrecipient submits Force Accounting Plan (if using own workforce personnel). If \$10M > = approved by FTA, or \$100,000 < \$10M = maintain plan in file or < \$100,000 = no plan required		
e.	Subrecipient submits copies to Baldwin County Commission of the solicitations received, including the selection process and justifications for concurrence		
f.	Subrecipient must comply with applicable provisions in the OSE manual concerning the selection of A/E exceeding \$25,000		
g.	Baldwin County Commission staff member attends the pre-construction conference with selected contractor prior to beginning the construction and/or renovation project		
3.2 Baldwin County Commission Reporting Requirements			
a.	Prominently display the "ARRA" decal at construction/renovation site (applicable only to ARRA funded projects)		
b.	Subrecipient must submit all required report to Baldwin County Commission		
3.3 ALDOT Invoicing Process			
a.	Subrecipient submits the following items on form 600:		
	1. Line Item invoice relating to project phases and tasks completed		
	2. Signed Milestone Report of the completed work - approved by local inspector		
	3. Photos for each phase of the completed work		
4.0 FINAL CLOSEOUT PROCESS			
a.	Baldwin County Commission conducts final inspection		
b.	Subrecipient obtains certificate of occupancy from appropriate authority		
c.	Submit Facility Maintenance Plan to Baldwin County Commission for approval		
d.	Subrecipient submits final invoice for payment		
e.	Baldwin County Commission issues Close Out letter		
MPO Coordinator: _____		Date: _____	
Submitted to FTA (if required): _____		Date: _____	

**XVIII. EXHIBIT 8: Assurances for Real Property
Acquisition Requirements Form**

REAL PROPERTY ACQUISITION REQUIREMENTS

And

RELOCATION REQUIREMENTS of TITLE II

of the

**Uniform Relocation Assistance and Real Property
Acquisition Policies Act of 1970, as Amended**

The Baldwin County Commission hereby assures that it will comply with Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, P.L. 100-17, 101 Stat. 246- 256 and the implementing regulations of 49 CFR Part 24.

(Name of Authorized Official)

(Signature)

(Title)

(Date)

XIX. EXHIBIT 9: NEPA Initiation Checklist

INFORMATION REQUIRED TO INITIATE NEPA

A CHECKLIST

For FTA to determine the extent of environmental analysis required for a proposed project, we must have a clear idea of what it may do to the environment. This includes the **natural environment** (soil, water, air, flora/fauna) *and* the **human environment** (socioeconomics, land use, traffic, etc.). Additionally, FTA must determine whether any Federal funding is sought (now or in the future) for the proposal and if FTA is required to make a decision or approval (e.g., approval for incidental use of property).

INFORMATION REQUIRED

- ☐ Sources of Federal, State, and local funds and transit nexus
- ☐ Description of existing property with a clear map showing the Area of Potential Effect (APE)

QUESTIONS to be ADDRESSED

Is the project a Federal Action eligible for FTA funding?

What are the Existing conditions? Cleared land or forested land? Water? Urban, rural, suburban? Gently rolling, flat, etc.? Modern visual intrusions in the area, such as cell towers, modern buildings, etc.? Is the site a brownfield or contaminated? Have any site assessments been completed?

- ☐ Street address or coordinates

Are there possible environmental areas of concern at the site or in its surroundings? Any known hazards? Existing buildings contain lead paint/asbestos? Standing water on site? Industrial site? Industrial sites within a block of the project site? In a historic district?

- ☐ Photos of property, any buildings on property and the surrounding area directly adjacent to the project site.

What are the characteristics of the natural environment of the property? Provide photos of the land in all directions and of any buildings or structures on the land. Are any of the buildings be historic? Are the buildings in use? Are the buildings safe? Who/what industry occupies the building?

- ☐ Photos of surrounding buildings visible from property

Are there any nearby buildings that may be historic? Any new construction visible from the project site? Number of stories of the buildings surrounding the project site.

- ☐ Description of complete project with site plan. Be specific for each action of the project.

What physical changes will be made to the existing site? Any digging or other ground disturbing activities such as clearing and grubbing? Will a building be constructed? Will an existing building be renovated or rehabilitated? Will parking be added or subtracted? Any changes to the traffic amount or flow due to the project? Provide any renderings that are available of the existing project site and the planned work. Be specific about actions, such as replacement of windows/doors, new construction, etc.

- ☐ List of actions required upon existing property to achieve complete project (e.g., clear 5 acres of wooded land, demolish building, culvert and cover creek, etc.)

Are there physical changes that are not obvious in the site plan? (e.g., excavation for a basement, fuel storage) Are there going to be any residential or business displacements?

- ☐ Logical termini, alignment, mode, and technology (if a linear project).

Has thorough planning for the proposed project occurred? (3 out of 4 are typically enough to begin NEPA.) Any feasibility or environmental studies been completed? If so, please attach to the checklist document.

- ☐ List of any public involvement done for the project, to date, if any

Has the community affected by the project been informed? If so, when was the community engaged/informed? Is there any potential controversy? Are there any local organizations that should be informed?

Property Acquisition: Unless an early or at-risk (hardship or protective buy) acquisition meets the conditions, property cannot be acquired until NEPA is **complete** and an environmental determination or decision document has been issued by FTA TR04. This restriction is found in FTA's environmental regulations ([23 CFR 771.113](#)) and includes offers to purchase the property or any other commitment to purchase the property or to proceed to a settlement ([FTA Circular 5010.1E](#)). Project sponsors should contact FTA TR04 with any questions about potential timing of property acquisitions and their corresponding NEPA documentation.

Examples, which can be either implied or explicit, of prohibited acquisition activities during the NEPA process include:

- Any offer to purchase;
- Any negotiation to purchase;
- Any discussion on price;
- Any commitment to purchase or establishing any conditions of purchase; and,
- Any commitment to proceed to settlement.

Equity Analysis: Be sure to review and understand your responsibilities per [49 CFR Section 21.5\(b\)\(3\)](#) for facility construction projects. Additionally, please review and comply with [FTA Title VI Circular](#).

The more information FTA knows about a project, the more accurate it can be in assigning the most appropriate level of environmental analysis.

XX. EXHIBIT 10: References

Federal Authority

- Procurement standards must meet or exceed the requirements of the Uniform Guidance “Super Circular” published by the Office of Management and Budget at 2 CFR Part 200. <https://ecfr.federalregister.gov/current/title-2/subtitle-A/chapter-II/part-200>. DOT incorporated these changes at 2 CFR part 1201, which deviates from part 200 only with respect to standard application requirements, equipment, procurements by States, and financial reporting. <https://ecfr.federalregister.gov/current/title-2/subtitle-B/chapter-XII/part-1201>.

- The requirements for the pre-award and post-delivery audits of vehicles are contained in

49 CFR Part 663. <https://ecfr.federalregister.gov/current/title-49/subtitle-B/chapter-VI/part-663>.

- The requirements for the (Altoona) testing of bus models are contained in 49 CFR Part 665. <https://ecfr.federalregister.gov/current/title-49/subtitle-B/chapter-VI/part-665>.
- The requirements for the Disadvantaged Business Enterprises (DBE) program as defined by the U.S. Department of Transportation (U.S. DOT) are located at 49 CFR Part 26. <https://ecfr.federalregister.gov/current/title-49/subtitle-A/part-26>.
- 49 CFR Part 28 relates to nondiscrimination on the basis of handicap in U.S. DOT programs and focuses on facilities. Requirements for transportation services for persons with disabilities are contained in 49 CFR Part 37. <https://ecfr.federalregister.gov/current/title-49/subtitle-A/part-37>.
- All vehicles shall comply with the vehicle accessibility guidelines contained in 36 CFR Part 1192 (the Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles). <https://ecfr.federalregister.gov/current/title-36/chapter-XI/part-1192>.
- Procedures for procuring architectural and engineering services are found in 40 USC Chapter 10, Subchapter VI. <https://www.govinfo.gov/app/details/USCODE-1997-title40/USCODE-1997-title40-chap10-subchapVI>.

A. State Authority

- For a description of ALDOT's policies regarding standard Federal requirements, refer to the **State Management Plan**. <https://www.dot.state.al.us/publications/LocalTransportation/pdf/StateManagementPlan.pdf>
- For a description of ALDOT's rules regarding contracting and procurement requirements specific to public transit projects, refer to the project agreement.
- The department's Disadvantaged Business Enterprise program describes the DBE goal, goal setting methodology, and complaint procedures. <https://www.dot.state.al.us/ltweb/transit/pdf/2020-2022ProposedALDOTTransitDBEGoalMethodology.pdf>.

B. Federal Transit Administration Guidance

- Federal Transit Administration (FTA) guidance for using third party agreements is found in **Circular 4220.1 (series)**. <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>.
- Guidelines and management procedures for capital purchases are covered in **FTA Circular 5010.1 (series)**. This document provides guidance on real property, equipment, supplies, and rolling stock. Local Match is also described in this Circular. <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/fta-circulars/58051/5010-1e-circular-award-management-requirements-7-16-18.pdf>.
- Individual program circulars have a section on procurement. A complete listing of FTA circulars is available on-line at FTA's web site: <https://www.transit.dot.gov/>.
- The *FTA Best Practices Procurement & Lessons Learned Manual* released October 2016 provides suggestions and sample documents covering every phase of procurement. It is located at: <https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>.
- The FAQ Procurement page on FTA's website provides questions and answers of general interest. It is located at: <https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs>.