

**OFFICE OF PROCUREMENT AND CONTRACTS  
POLICIES MANUAL**


The revised Procurement policies approved by the Board of Directors will supersede and replace all other prior dated and undated procurement policies.

Revision Number: Amendment #7

Revision Date: November 13, 2019

Date of issuance: Nov 13, 2019

Signed:   
Tom Phillips, Executive Director

Signed:   
David Persaud, CFO  
Office of Procurement and Contracts

Date: Nov 13, 2019

Date: 11-13-2019

Supersedes and replaces:

Revision Number: Amendment #6 Revision (f)

Issued Date: October 13th, 2009

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# Table of Contents

<b>1.0</b>	<b>General Provisions</b> .....	<b>3</b>
1.01	Introduction .....	3
1.02	Purpose and principle .....	3
1.03	Exclusions.....	3
1.04	Procurement Authority .....	4
1.05	Advanced Acquisition Planning .....	4
1.06	Requisitions .....	5
<b>2.0</b>	<b>Procurement Policies</b> .....	<b>5</b>
2.01	Petty Cash (purchases under \$50.00).....	5
2.02	Direct Payments.....	6
2.03	Micro-Purchases (purchases up to \$2,500).....	6
2.04	Capital assets .....	7
2.05	Small Purchases (purchases \$2,500.00 up to \$35,000).....	7
2.06	Sealed Bid Process “Invitations for Bid” (IFB) (\$35,000.00 and greater).....	7
2.07	Requests for Proposal (RFP) (Over \$35,000) .....	7
2.08	Non-competitive procurements (sole, single or directed source).....	8
2.09	Emergency Purchases (Authorization and Criteria).....	8
2.10	Purchase Card Program (Purpose and Requirements) .....	9
<b>3.0</b>	<b>Approval of Awards, Delegation of Authority</b> .....	<b>10</b>
3.01	Rejection of Bids/ Proposals.....	11
3.02	Execution of Instruments .....	11
3.03	Change Orders, Modifications or amendments.....	11
<b>4.0</b>	<b>Protest Policy</b> .....	<b>12</b>
4.01	Protest .....	12
4.02	Suspension of the Procurement Process .....	12
4.03	Resolution of Protest.....	13
4.04	Appeal of Decision .....	13
4.05	Breaches and Dispute Resolution .....	14
<b>5.0</b>	<b>Contract Administration System Requirements</b> .....	<b>16</b>
5.01	Documentation Files .....	16
5.02	Contract Audit and Review.....	16
<b>6.0</b>	<b>Standards of Conduct</b> .....	<b>16</b>
6.01	Governance.....	16
<b>7.0</b>	<b>Confirmation purchase/ UNAUTHORIZED Purchase</b> .....	<b>18</b>

## **1.0 GENERAL PROVISIONS**

### **1.01 INTRODUCTION**

This Procurement Policy Manual for the Lakeland Area Mass Transit District (District) contain the guidelines that detail the operative policy regarding the use, awarding, monitoring and reporting of procurement contracts for the District. Procedural requirements for staff shall be expanded in greater detail and depth in the department's Standard Operating Procedures (SOP) manual, which is available for review upon request. Nothing therein to the contrary shall supersede this Policy Manual, and this manual shall take precedence over the SOP manual.

### **1.02 PURPOSE AND PRINCIPLE**

In the spirit of fair and open competition, the purpose of these policies is to provide for the fair and equitable treatment of vendors offering goods and services proposed to the District. The District's goal is to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity. The revised procurement policies approved by the District's Board of Directors will supersede and replace all other prior procurement policies.

Procurement is the process by which the District acquires goods and services necessary to fulfill its mission. The District shall acquire necessary goods and services in the most cost-effective manner yielding the best value for its employees and the public. The District's objective is to promote full and open competition as the guardian of state and federal funds using the most publicly transparent procedures possible, in accordance with Chapter 286, Florida Statutes (the "Sunshine Act"). It is the intent that this policy shall comply with all applicable state and federal laws so that the policy shall be superseded by those laws where they are applicable.

Applicable laws include the Florida Statutes that relate to procurement of goods and services and construction by a government agency with state funds, applicable Omnibus Procurement Act requirements, and the Florida Department of Transportation (FDOT), Federal Transit Administration (FTA) Circular 4220.1F (or the latest revision). If federal funds are utilized, the District will employ practices consistent with the FTA Best Practices Manual for that purchase. If non-federal funds are utilized, the District shall employ these practices to the maximum extent possible but shall in the alternative only employ practices consistent with the Florida Statutes, in particular Chapter 287. The provisions set forth in this policy shall apply for the procurement of supplies, services and construction, entered into by the District. They shall apply to all expenditures of public funds by the District for public purchasing irrespective of its source.

### **1.03 EXCLUSIONS**

The following items are excluded from the precise procedures herein:

The procurement of real property interests (but does apply to the procurement of real property-related services except as set forth herein); Inter-local agreements between the District and governmental entities for goods or services; dues and memberships in trade or professional organizations, subscriptions for periodicals, advertisements, postage, petty cash, abstracts of titles for real property, closing costs and processing fees for acquisitions, title insurance for real property, deeds, judgments, debt service, mortgagee(s), collective bargaining agreements, taxes, auto allowance, borrowing of money, pensions, bonds, water, sewer, electrical and communications, utility services, copyrighted books, videos, fees, costs of job-related seminars or training, fees, licenses, permits, approved travel expenses, and other similar expenses. Any items not listed above but exempted by the Federal Transit Administration (FTA) Circular 4220.1F, as revised, shall be incorporated herein by reference.

Purchases of goods and services through the proper utilization of existing governmental competitive contracts made available to the District, commonly referred to as "piggyback

contracts”, so long as the procedures used in the FTA Best Procurement Practices Manual are followed. However, the FTA discourages the use of piggyback agreements unless absolutely necessary for the public interest. It is preferred to use consortium, or “demand-pool”, purchasing methods rather than piggybacking methods.

#### **1.04 PROCUREMENT AUTHORITY**

The Manager of Procurement and Contracts, and/or designees as assigned, shall serve as the principal officer for the contracting and/or purchase of all goods and services for the District. As such, the Manager of Procurement and Contracts (“Manager”) ensures that the office adherence to all agency, state, and federal guidelines are observed. The Manager maintains a staff of qualified procurement professional responsible for obtaining requested goods and services within established procurement guidelines, the identified budget, and timeframe. The Manager ensures local and federal participation goals are met for all segments of the vendor community. Procurement and Contracts administers a certified Disadvantaged Business Enterprise (DBE) program and is responsible for guiding the agency in meeting its federal mandated goal for DBE participation. The District’s policy of vendor inclusion is facilitated through the use of a vendor data based, maintained by Procurement and Contracts, and used to identify potential providers of goods and services. Solicitation are issued and considered through fair and open competition. Procurement and Contracts maintains reviews and updates Procurement Policies, and obtains approval for changes, modifications and additions from the Board of Directors, and the Executive Director of the District.

Procurement and Contracts establishes and maintains the policies and procedures for selection of each form of procurement with respect to all methods of procurement as defined in FTA circular 4220.1F, as amended. These shall be based on requirements, structure and dollar threshold and to administer these policies.

Accountability for the organization and structure of contract clauses, terms and conditions, and standard solicitation documents, and contract administration system forms is vested in the Manager of Procurement and Contracts.

#### **1.05 ADVANCED ACQUISITION PLANNING**

The District’s procurement staff, in collaboration with various District departments, procures a wide range of good and services for the ongoing and future operations of the District. Generally, the function of the District’s procurement staff should commence upon receipt of requisitions and relevant supporting documentation from the departments. While this approach may be sufficient for some purchases, it may not be appropriate for most major acquisitions.

Advance acquisition planning is especially necessary for major procurements and should be conducted in accordance with sound business practices and in a timely manner. Advance acquisition planning involves the District’s procurement staff, in collaboration with the User Departments, reviewing specifications and statements of scope/work to determine that the purpose of the acquisition is clear, and that the minimum requirements are clearly defined and stated in terms of performance and/or functionality when possible. It should also include market research and analysis to determine sources of supply, including opportunities for DBE participation and available solutions in the marketplace.

Advance acquisition planning usually results in effective competitive solicitations, accurate budgetary projections, timely procurement of goods and services, consideration of multiple products or solutions, and enhanced competition.

It is often the case that procurement actions are delayed due to conflicting or unanticipated workloads, redundant requirements, repetitive after-the-fact revision of specifications or

solicitation provisions, or initially unconsidered competition or business utilization issues. The best way to minimize the potential for such delays is to identify and resolve such concerns during the initial planning phases for a given purchase.

It is the desire of the District's procurement staff's intent and goal to work with departments at the earliest point possible in the acquisition cycle. The acquisition cycle begins when a department perceives a need for a given product or service and decides to purchase that supply or service. The District's procurement staff can provide a significant value-added service when we work collaboratively with the User Department in the early phases of the acquisition cycle. Such early coordination will minimize or even eliminate procurement pitfalls such as those addressed above.

It is the goal of the District's procurement staff to ensure that District purchases are completed in the most effective and timely manner possible. We consider Advance Acquisition Planning to be a major element toward achieving that goal. Actions and policies intended to affect such planning are in process, will continue, and will be expanded in coordination with all District departments.

## **1.06 REQUISITIONS**

When there is a need for goods and/or services which are not available from any existing contract with the District that exceeds the limitations of the micro-purchase, an electronically generated requisition must be submitted to Procurement through the current requisition approval path. User department personnel should evaluate the need for goods and services, determine expected usage, and plan their purchases to effectively meet District and operational demands.

Before submitting a requisition to the District's procurement staff, the User Department must ensure that:

- Valid requirements have been established
  - Funds are available to cover the purchase
  - Specifications and or Statement of Work are available and complete; and defined or attached
- Other required documents are provided (independent cost estimate and market research)
- Estimated total dollar value of procurement should be identified

If the requisitioned purchase relates to the safety and security of District employees and the public, they will be processed in a manner which accords *first* priority in time.

## **2.0 PROCUREMENT POLICIES**

All requested procurement activities, with the exception of "Petty Cash" (\$50.00) and Purchasing (P-Card) purchases shall *first* be reviewed by the Manager of Procurement and Contracts. These procurement procedures shall be defined in the standard operating procedures for procurement of goods and services document.

The below noted Procurement thresholds may vary between that of the District; the FAR; the FTA; and the FDOT; the District shall follow the most stringent threshold requirements.

### **2.01 PETTY CASH (PURCHASES UNDER \$50.00)**

For procurements valued up to \$50.00, petty cash funds may be available for the District staff to procure locally small items and services. The single purchase limit is \$50.00. Petty cash should be used for any purchase of \$50.00 or less if the purchase cannot be made using a P-Card.

## **2.02 DIRECT PAYMENTS**

Certain purchases made by the District are considered appropriate for direct payment and are therefore excluded from the procurement processes set forth in these guidelines. The items eligible for direct purchase are listed below:

- Utilities
- Mileage
- Miscellaneous refunds
- Freight
- Permits
- Newspaper and magazine subscriptions and advertisements
- Tuition
- Postage
- Memberships and Registrations
- Books and Films
- Gasoline Credit Cards charges
- Notary Fees
- Tax Bills, Special Assessment Bills
- Software Tax and Law Service Publications

Items being purchased directly must not be available under an existing contract. Any vendor that does business with the District shall be registered in the District's vendor data base.

## **2.03 MICRO-PURCHASES (PURCHASES UP TO \$2,500)**

It is the direct responsibility of the District's Department Managers to ensure that micro-purchases are not abused in any manner. All District staff participating in the procurement process should adhere to procurement policies of the District. This applies to both Purchase Order and P-Card procurement.

Purchases under \$2,500.00 require "a fair and reasonable price" justification. Micro-purchases may be made without obtaining competitive quotations if the quoted price can be determined to be fair and reasonable. The user's file must contain support for the conclusion that the price to be paid is fair and reasonable. This support can be in the form of documentation that the purchaser shopped multiple locations or obtained verbal quotes that show a purchase price that was reasonable. Generally, the vendor offering the lowest price for goods or services that are ready for immediate delivery shall be selected. According to the Federal Rules of Acquisition, if the item is from a catalogue, sold at retail, or sold commercially off the shelf (COTS), the item price is presumed to be fair and reasonable.

- 1) Anyone making a micro-purchase should distribute or "share the wealth" of micro-purchases equitably among qualified suppliers. The purchaser must buy items in a manner reflecting equitable distribution of vendors.
- 2) Anyone making a micro-purchase may not divide or reduce the size of its procurement merely to come within the micro-purchase limit. Unnecessary inventory items should not be purchased unless they are subject to the provisions of an emergency requirement.
- 3) FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination.

User Departments shall audit micro-purchases to avoid over expenditure of funds. Additionally, the Procurement Department will monitor micro-purchases and alert Department Managers of

noted abuses. The Procurement Department will also monitor repetitive purchases, which indicate the need for competitively sourced term contracts.

#### **2.04 CAPITAL ASSETS**

The acquisition of capital assets shall be conducted by the Procurement Department. Capital assets are as defined within the Finance Manual, as modified and/or amended.

#### **2.05 SMALL PURCHASES (PURCHASES \$2,500.00 UP TO \$35,000)**

Small purchases are those simple acquisition procurements that may follow informal procurement methods for procuring supplies, services and or other property with a total aggregate cost of less than \$35,000.00.

Documentation will be required for purchases in this category to be considered, most purchases in this range will be governed by the procedures, unless otherwise covered in another provision of these procedures.

Goods and services with a total cost of \$2,500.00 but less than \$5,000.00 may be purchased after receiving three oral or written quotes. Advertisement is not a requirement.

Goods and services with a total cost of \$5,000.00 but less than \$35,000.00 may be purchased after receiving three written quotes, which are documented with the required vendor information and attached to the purchase requisition.

#### **2.06 SEALED BID PROCESS “INVITATIONS FOR BID” (IFB) (\$35,000.00 AND GREATER)**

Required for procurements with a fixed specification valued at \$35,000.00 and above. This procurement method shall be employed when there is:

A complete, adequate, and functional specification and a clearly defined purchase description.  
That two or more responsible bidders are willing and able to compete or that the industry or service required will support open competition.

The procurement lends itself to a firm fixed price contract.

The selection via the sealed bid process “invitations for bid” (IFB) can be made primarily on the basis of price.

Publication of the IFB is required by the District and by the FTA. The Procurement and Contracts Department shall publicly advertise by announcing the IFB electronically through a “business-2-government” web-based service and the District’s website. These items may be advertised in a major and local newspaper or other source such as a trade publication. The Board shall be advised, in advance, of any advertisement for an acquisition anticipated to exceed \$1,000,000.

#### **2.07 REQUESTS FOR PROPOSAL (RFP) (OVER \$35,000)**

(Award based on Source Evaluation Committee Recommendations)

The RFP method of procurement may be used where the decision to award will be based upon factors other than price and is valued at \$35,000.00 and above. Generally, the evaluation process shall consist of various categories in which the proposer must demonstrate proficiency and quality to meet the needs and standards requested by the District (examples of such categories are Professional Qualifications, Past Performance/Experience, Approach and Project Management and Methodology).

The District’s procurement staff shall solicit sealed written proposals under the RFP process from vendors for the good(s) and/or service(s) to be purchased. The solicitation preparation and issuance process shall be conducted in accordance with the District procurement staff’s internal policies and procedures, and all related District policies and directives. The District’s User



Departments will be involved in the solicitation process to ensure that project or product specific requirements are adequately addressed.

Florida's CCNA (Consultant Competitive Negotiations Act) and the Brooks Act apply to the contracting of Qualifications based on procurements for services described in 49 U.S.C. Section 5325(b) and shall be followed in the issuance and conduct of an RFQ/RFP for these services. Solicitations for professional services Architectural and Engineering (A&E) shall be conducted in accordance with the FTA 4420.1f and F.S.287.055.

## **2.08 NON-COMPETITIVE PROCUREMENTS (SOLE, SINGLE OR DIRECTED SOURCE)**

It is the policy of District to purchase its goods and services through a full and open competitive process. However, when competition is not available or when it is determined in the best interest of the District it may be necessary to utilize procurement methods other than full and open competition. The District may authorize the execution of purchases by a Directed Source, Sole Source or Emergency method (specific guidance on emergency actions is contained in a separate section of this document).

A Sole Source (SS) purchase is the procurement of goods or services for which there is only one source that can provide the good or service, and an equal product or service is not available from any other source. The User Department shall justify in writing why it is in the best interests of the District to use a sole source item or service.

A Directed Source (DS) purchase is the procurement of goods or services without formal competitive bidding, when it is determined to be in the best interests of the District although multiple sources may be available.

These procurement methods should be rarely used and only in procurements where no legitimate competition exists. FTA C.4220.1F stipulates that the sole or single source method of procurement is to be used when:

An item is available only from one responsible source, and no other supplies or services will satisfy its requirements. In accordance with FTA C 4220.1f to be considered a sole source it must have unique capability or availability. The property or services are available from one source if one of the conditions described below is present:

- Unique or Innovative Concept
- Patents or Restricted Data Rights
- Substantial Duplication Costs
- Unacceptable Delay

The explanation/justification shall be based on the User Department's unique need precluding the use of alternative approaches or solutions. All supporting documentation shall be made part of the procurement records.

## **2.09 EMERGENCY PURCHASES (AUTHORIZATION AND CRITERIA)**

### **2.09.1 Authorization:**

The Executive Director, or in the absence of the Executive Director, the Manager of Procurement and Contracts may authorize emergency purchases when an emergency exists. Emergency purchases exceeding \$25,000.00 will be reported to the Executive Director within seventy-two (72) hours and to the Board at its next meeting.

### **2.09.2 Criteria for Emergency Purchases**

The following constitutes grounds for the emergency purchase of goods or services through non-competitive processes:

An emergency purchase shall be defined as an unforeseen or unanticipated urgent and immediate need for equipment, supplies, or services where the protection of life, health, safety or welfare of the community or employees within the jurisdiction, boundaries or service area of the District would not be possible using normal purchasing procedures. Additionally, an emergency purchase includes the purchases of goods or services that would mitigate the sudden and unforeseen disruption of services throughout the District boundaries (due to public safety and natural disaster considerations).

Requisitioned goods or services may not be obtained on the basis of an emergency, if the need arises due to negligence and/or lack of planning. Failure to anticipate normal needs, missed project deadline dates, or a desire to expend excess or remaining budgeted funds prior to yearend does not constitute an emergency. Poor inventory management or lack of planning does not constitute an emergency.

Goods or services under \$3,000 are not subject to these provisions and may be procured in the manner outlined in this Policy Manual.

### **2.09.3 Natural Disaster Emergency Purchases**

Emergency disaster purchases are those purchases needed due to unforeseen acts of nature, including but not limited to hurricanes, tornados, floods, fire, etc. Should the Board of Directors or the Executive Director declare a natural disaster emergency, the Manager of Procurement and Contracts may take the necessary steps to affect the purchasing needs of the transportation district to maintain effectual services within the district.

All purchases, which occur during the declared emergency, must adhere to procurement guidelines when prudently possible.

The Manager of Procurement and Contracts or the procurement Manager's designee may take the necessary steps to achieve the purchasing needs of the District to contract emergency purchases of goods or contractual services. Should communications with the procurement Department not exist, the purchase authorization and purchase order issuing will transfer to the Operations Manager for the District in the Emergency Operations Center (EOC).

If time and situations allow, any of the aforementioned personnel should attempt to solicit quotations for each emergency purchase. In some situations, there may only be time to contact a single vendor, or time may allow for contacting three (3) vendors. If the particular situation only allows contacting a single vendor, documentation should be kept for each purchase made.

The District's procurement staff shall report to the District's Executive Director, any departmental procurement practices which reflect poor operational planning or management and have the potential effect of defeating the purpose of the procurement process including emergency purchases.

### **2.10 PURCHASE CARD PROGRAM (PURPOSE AND REQUIREMENTS)**

The District's Purchasing Card (P-cards) program has been designed to improve the efficiency in processing micro-purchases and aid in the accounting of authorized travel from any vendor who accepts the P-cards. This program will allow the cardholder to purchase approved goods and services directly from vendors, the P-cards will be issued to the Executive Director and Department Managers and other designated staff of the District. Both the card holder and the District will be clearly shown on the card as the buyer of goods and services. The Finance and Accounting Department will administer the program together with the procurement Department. Procurement will aid in the monitoring of the performance of the program.

### **2.10.1 Purpose of the procurement Card Program**

- 1) Provide an efficient method of payment for goods and services not exceeding \$3,000.00 per purchase (or, as revised by FTA regulations), except for certain travel related purchases.
- 2) P-cards will be issued to Department Managers who are frequently responsible for micro-purchases of goods or services. This should reduce the number of micro and multiple purchase orders and direct pays. Detailed procedures may be found in the Purchasing Card Policy and Procedure Manual, which shall be given to and signed by each card user.

### **2.10.2 Rules and Requirements**

The procurement responsibility for micro-purchases is delegated to the authorized Manager enabling them to place an order directly with a vendor. When the vendor at the point-of-sale requests a purchase authorization, the P-card software system checks the transaction against preset limits established by the District for that cardholder and a transaction will be approved or declined electronically based on the card authorization criteria that has been established. The authorization criteria may be adjusted as needed and generally includes but is not limited to single purchase limit of \$3,000, as set by the Manager of Procurement and Contracts, and restrictions concerning types of merchants that the P-card can be used with.

Travel and entertainment (“T&E”) expenses are prohibited from being applied to the P-Card and shall be applied to a separate credit card used solely for that purpose.

### **2.10.3 Spending Limits**

The Procurement and Contracts Manager will set two limits for each cardholder, namely a single purchase limit and a 30-day billing cycle limit. Specific language on limit changes and splitting charges is addressed in the Purchasing Card Policy and Procedure Manual.

### **2.11 Procurement of Ancillary Services**

When deemed reasonably necessary, and with the concurrence of the Executive Director, ancillary services may be procured by the professionals representing the District as described in the definition of “Ancillary Services.” In each case, such procuring professionals shall make a determination of the best value provider of the necessary ancillary service on the basis of cost considerations as well as quality, reputation, availability, and timeliness of the required services. In appropriate cases (not including professional services described in Florida’s Consultant’s Competitive Negotiation Act), quotes shall be obtained, or other market information utilized to verify the reasonableness of the prices or rates of compensation to be charged.

## **3.0 APPROVAL OF AWARDS, DELEGATION OF AUTHORITY**

The District’s Board of Directors shall review and/or modify and authorize all contracts for execution that exceed Fifty Thousand dollars (\$50,000.00). Pursuant to this Rule, the District’s Board of Directors shall delegate the authority to award procurements so approved for award by this District’s Board of Directors.

Authority to Award Contracts:

- The District’s Board of Directors shall award all contracts greater than \$50,000.
- The District’s Executive Director shall have the authority to award contracts up to \$50,000.
- The District’s Executive Director has delegated limited award authority to the District’s Manager of Procurement and Contracts.
- The District’s Manager of Procurement and Contracts may award contracts up to \$25,000.

- The District's Manager of Procurement and Contracts has delegated limited award authority to the District's Contracts Specialist and Procurement Agent.
- The District's Contracts Specialist may award contracts up to \$10,000.
- The District's Procurement Agent may award contracts up to \$3,000

All purchases awarded between \$25,000 and \$50,000 will be reported to the Board at the next Board meeting.

Revenue contracts with a value exceeding the Executive Director's delegated authority are to be placed on the Board agenda for approval. Award of revenue contracts shall follow the same pattern of delegated authority.

The dollar amount or dollar value of any Contract in the aggregate, including any potential option terms, shall not exceed the dollar limitation specified in the award approved by the District's Board of Directors.

Contracts for the supply and delivery of fuel shall be exempt from prior Board authorization, due to the volatile nature of the commodity in terms of price. The Board shall be notified at the next board meeting following the execution of a contract for such service by the Executive Director or his designee.

### **3.01 REJECTION OF BIDS/ PROPOSALS**

The Executive Director or designee (the District's Manager of Procurement and Contracts), may reject any and all bids/proposals or parts of all bids/proposals within the thresholds noted above, up to \$50,000 when such rejection is in the best interests of the District. Rejection of bids/proposals may also be protested. The guidelines for filing a protest are in Section 4.0 of this manual.

### **3.02 EXECUTION OF INSTRUMENTS**

If there is an unplanned absence by the Executive Director or vacancy thereof, the Executive Director designates the head of Finance as the authorized official to sign all contracts, purchase orders, change orders and work orders which have been approved by the District's Board of Directors. In the unplanned absence or vacancy of both the Executive Director and CFO positions, the Procurement and Contracts Manager retains delegated authority to authorize such instruments.

### **3.03 CHANGE ORDERS, MODIFICATIONS OR AMENDMENTS**

The Executive Director shall have the authority to execute individual change orders or contract modifications increasing or decreasing the original contract award by the Board. For contracts under \$50,000, the Executive Director may approve contract modifications up to a total contract amount of \$50,000. Any contract modification that increases the contract amount from below \$50,000 to over \$50,000 shall require Board approval. The Board shall be advised of any contract modification that increases the contract value from below \$25,000 to \$50,000 at the next Board meeting.

For contracts having an original or modified contract amount exceeding \$50,000, the Executive Director may approve contract modifications or change orders not exceeding 20% of the original contract amount or the Board authorized Not-to-Exceed amount unless authorizing award states otherwise during the course of the initial contract term.

For contracts in an Option to Renew term the Executive Director may execute a modification up to 20% in the aggregate of the modified contract amount during the term of any option to renew that may be exercised during the renewal term.

For contracts under \$25,000, the Manager of Procurement and Contracts may approve contract modifications up to a total contract amount of \$25,000. Any contract modification that increases the contract amount from below \$25,000 to over \$25,000 but not exceeding \$50,000 shall be approved by the Executive Director.

#### **4.0 PROTEST POLICY**

This policy provides procedure for a resolution of protests arising from the Procurement process. Contracts not subject to formal competitive sourcing; that is contracts that were not recommended for award pursuant to an issuance of IFB or RFP, or contracts awarded pursuant to an emergency declaration or other emergency procedures are not subject to the Protest Policy. The District reserves the right to waive any minor informalities or irregularities, which do not go to the heart of the Procurement or prejudice other bidders or proposers and/or to reject any and all Bids or Proposals submitted in response to any Invitation to Bid or Request for Proposals. Conditional Bids or Proposals or those that take exception to the specifications may be considered non-responsive and may be rejected by the Manager of Procurement and Contracts.

##### **4.01 PROTEST**

Any person adversely affected by the decision of the District, or its designee, to award a contract or to reject all bids/proposals shall file a notice of protest, in writing, within 36 hours after posting the intent to award or the recommendation thereof. Failure to submit the Notice of Intent to Protest within thirty-six (36) hours will result in the protest being rejected by the District without further consideration. Only an “interested party” that is an actual offeror, bidder or proposer, whose direct economic interest would be affected by the award or failure to award retain the right to protest. The bidder, offeror or contractor has the responsibility to contact the District and request the written award recommendation (failure to contact the District for the award recommendation to determine if a bid protest is warranted is considered lack of due diligence).

Saturdays, Sundays, or Federal or State of Florida holidays shall be excluded in the computation of the time periods provided by this section.

The formal written protest shall state with particularity the facts and the laws upon which facts and the law upon the protest is based it shall also identify the protesting party and the solicitation involved.

All notices of protest and formal protest shall be filed with the District’s Manager of Procurement and Contracts at 1212 George Jenkins Blvd, Lakeland Fl 33815 and with District’s attorney and each bidder/proposer. Filing is complete upon receipt of the Manager of Procurement and Contracts.

A protest is not timely filed unless both the notice of protest and the formal protest are received by the Manager of Procurement and Contracts, or designee, within the required time limits. Failure to file the formal written protest in a timely manner shall constitute a waiver of the right to protest the award recommendation. No additional time will be added to the time limits for mail service.

##### **4.02 SUSPENSION OF THE PROCUREMENT PROCESS**

Upon receipt of the formal written protest which has been timely filed, the contract award process shall be stayed until the subject of the protest is resolved by the final District action, unless the District’s Executive Director or the designee thereof sets forth in writing particular facts and circumstances which require the continuance of the contract award process without delay in order to avoid immediate and serious danger to the public or District safety.

Upon receipt of a timely formal protest of intent to award or a decision to reject all bids/proposal responses, notice shall be supplied by the District either electronically or via U. S. Mail to all bidders/proposers for that contract. Additionally, the District shall notify FTA when it receives a third party contract protest and to keep FTA informed about the status of the protest. FTA also encourages the recipient to keep its FTA project manager informed about protests with which it is involved.

#### **4.03 RESOLUTION OF PROTEST**

Upon written request of the protestor or on its own, the District shall provide an opportunity for the protestor to meet with the Manager of Procurement and Contracts to resolve the protest by mutual agreement, within the five days, Saturday, Sunday or legal holidays, of a formal written protest.

If the protest is not resolved by mutual agreement and the protest is not withdrawn within 5 days, Saturday, Sunday or legal holidays, of receipt of the formal written or within 48 hours of the meeting between the Manager of Procurement and Contracts or designee and the protestor, whichever is later, and if there is no disputed issue of the material fact, an informal proceeding shall be conducted pursuant to the Section 120.57(2), F.S. A committee of appointed District staff shall conduct an informal hearing.

If the subject of the protest is not resolved by mutual agreement and the protest is not withdrawn within 5 days, excluding Saturday, Sunday or legal holidays, of receipt of the formal written or within 48 hours of the meeting between the Manager of Procurement and Contracts or designee and the protestor, whichever is later, and if there is a disputed issue of material fact, the protest shall be referred to the Division of Administrative Hearings for proceedings consistent with Chapter 120.57(1), F.S.

If the contract is being awarded subject to the provisions of Section 120.57(5), F.S. upon receipt of the protest, the Division of Administrative Hearings shall expedite the hearing and assign a hearing officer that shall conduct a hearing within 15 days of the receipt of the formal protest by the Division and render a recommended order within 30 days after the hearing or within 30 days after receipt of the hearing transcript by the hearing officer whichever is later. The provisions of this paragraph may be waived upon stipulation by all parties.

#### **4.04 APPEAL OF DECISION**

Bidders and proposers have within three (3) business days of receipt of the written decision to file a formal written appeal and bond to the District's Procurement and Contracts Manager. The written request shall state with specificity the grounds for the appeal and also the action requested.

Any person who files an action appealing a decision shall post with the Procurement and Contracts Department at the time of filing the formal written appeal a bond payable to the District in an amount equal to five percent (5%) of the estimate of the total volume of the contract/claim or Five Thousand Dollars (\$5,000.00), whichever is less.

The bond shall be conditioned upon the payment of all costs, which may be adjudged against appellee in the administrative hearing in which the action is brought and in any subsequent appellate court or court proceeding. In lieu of a bond, the District may accept a cashier's or certified check, or money order in the above referenced amount. If, after completion of the administrative hearing process and any court or appellate court proceedings, the District prevails, it shall recover all costs and charges, which shall be included in the final order or judgment. Upon payment of such costs and charges by the person appealing the decision, the bond, cashier's check, or money order shall be returned to the protestor or the District will deposit the

bond, cashier's check, or money order. If the protestor appealing the decision prevails, the protestor shall recover from the District all costs and charges, which shall be included in the final order of judgment, excluding attorney's fees.

Nothing in this Section is intended to affect the existing powers of the District's Board of Directors to settle actions pending before the *Court*.

In the event the protesting party's claim is upheld the court awarded damages on behalf of the protesting party and if the award of said contract is not awarded to the protesting party, the District shall be solely limited to bid/proposal preparation costs, and reimbursement of the amount of the protest bond as stipulated herein.

The denial of an appeal may be further appealed to the FTA. The appellate process concerning the FTA shall be governed exclusively by its rules in C.4220.1F, as revised.

An interested party may file a protest with the Federal Transit Administration (FTA) of the U.S. Department of Transportation pursuant to the procedures provided in FTA C 4220.1F, as revised. Alleged violations of certain federal requirements provide a separate complaint procedure.

The protester must exhaust its administrative remedies by pursuing the District's protest procedures to completion before appealing the decision to FTA. Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

#### **4.05 BREACHES AND DISPUTE RESOLUTION**

Breaches and disputes shall be handled in accordance with FTA Section 49 CFR Part 18 and Circular 4220.1F and the Best Procurement Practices Manual. Termination provisions in a formal contract or standard purchase order terms and conditions shall be followed, if necessary. Termination for convenience and cause provisions shall be included in all contracts over \$10,000, but in any case, shall be incorporated by reference on each purchase order for any amount. These standard purchase order terms and conditions shall govern in the absence of a formal, written contract, and shall be posted on the agency's web site.

##### **4.05.1 Applicability to Contracts**

All contracts in excess of \$50,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

The Breaches and Dispute Resolutions requirements flow down to all tiers, the following clauses are examples of provisions from various FTA third party contracts:

1) Disputes.

Disputes arising in the performance of a contract which are not resolved by agreement of the parties shall be decided in writing by the contracting officer. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the contracting officer. Concerning any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the contracting officer shall be binding upon the Contractor and the Contractor shall abide to the decision.

2) Performance during Dispute

Unless otherwise directed by the District, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

3) Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

4) Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the District and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the District is located.

5) Rights and Remedies

The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law

#### **4.05.2 References**

Disputes, Breaches, Defaults, or Other Litigation. The District agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

Notification to FTA. The District agrees to notify FTA in writing of any current or prospective dispute, breach, default, or litigation concerning alleged damages over \$10,000 that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the District seeks to name the Federal Government as a party to litigation for any reason, in any forum, the District agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the District operates its public transportation system.

Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the District may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

Enforcement. The Recipient agrees to pursue all legal rights provided within any third-party contract.

FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the District.

Alternative Dispute Resolution. FTA encourages the District to use alternative dispute resolution procedures, as may be appropriate.

Amendments to the Project. The District agrees that a change in Project circumstances causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement will require an amendment to the Grant Agreement or Cooperative Agreement for the Project signed by the original signatories or their authorized designees or successors. The District agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement or Cooperative Agreement for the Project.



## **5.0 CONTRACT ADMINISTRATION SYSTEM REQUIREMENTS**

In listing the "General Procurement Standards Applicable to Third-Party Procurements," the FTA has established two standards that address contract administration documentation as opposed to procurement administration documentation:

Contract Administration System – the District shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Responsibility for Settlement of Contract Issues/Disputes - the District alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibility under its contracts.

### **5.01 DOCUMENTATION FILES**

The procurement official shall maintain the "official" contract file, the "official" file will include all official correspondence relating to the administration of the contract so as to verify the contractor's adherence to the terms of the contract and demonstrate that the District is following good administrative practices and sound business judgment in settling all contractual and administrative issues arising during contract performance.

### **5.02 CONTRACT AUDIT AND REVIEW**

All contracts involving the expenditure of public funds shall be subject to review and audit during and after performance to ensure that the District has received in full the contracted goods and services.

This documentation will take precedence, and have greater evidentiary value, over verbal forms of evidence. This is to demonstrate that the contracting officer and the contractor have complied with the terms of the contract (i.e., bonds have been submitted, contractual issues requiring the approval of the contracting officer have been submitted and approved, requests for payment have been submitted, reviewed, approved, and processed, etc.) and that contractual and administrative issues in dispute have been addressed and settled in accordance with good administrative practice and sound business judgment.

## **6.0 STANDARDS OF CONDUCT**

The Federal Transportation Authority Regulation 49 CFR § 18.36(b)(3) establishes for the Department of Transportation the government-wide requirement that state and local government grant recipients must have written standards of conduct for procurement personnel.

### **6.01 GOVERNANCE**

The District shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. The following are minimum requirements of the code of standard of conduct:

No employee, officer, agent, immediate family member, or Board member of the District shall participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent would be involved.

No employee, officer or agent of the District shall participate in selection, or in the award or administration of a contract as an FTA grant recipient supported by Federal funds if a conflict of

interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

The employee, officer or agent or Board member

Any member of the employee's immediate family,

The employee's partner, or

An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The District's officers, employees or agents or Board members will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The District may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the District's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

As an ethics requirement, Section 3(a) of the FTA Master Agreement requires the written standards of conduct to encompass both personal and organizational conflicts of interest and defines them as follows:

49 CFR § 18.36(c) (v) and 49 CFR § 19.43 prohibit organizational conflicts of interest as restrictive of competition. Section 19.43 further states as follows:

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The District shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals shall be excluded from competing for such procurements.

Awards shall be made to the respondent whose bid or offer is determined to be both responsive and responsible to the solicitation and is most advantageous to the District, considering price, quality and other value-related factors. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the District. Any and all bids or offers may be rejected when it is in the District's interest to do so.

40 CFR § 1506.5(c) concerns the engagement of a consultant for the preparation of an environmental impact statement under the National Environmental Policy Act (NEPA). It states the following:

Environmental impact statements. Except as provided in Section 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency.

It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation

and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

#### **7.0 CONFIRMATION PURCHASE/ UNAUTHORIZED PURCHASE**

A confirmation purchase is defined as a ratification of an unauthorized purchase executed by a User Department that is not in compliance with the policies contained in the District's policies and procedures manual. A Confirmation Purchase requires retroactive approval of an unauthorized purchase. A confirmation purchase requires retroactive approval by the District's Procurement and Finance staff for actions up to \$50,000, and by the Board for commitments exceeding that amount. The employee responsible for an unauthorized purchase may be subject to disciplinary action and may be held responsible for repayment of the unauthorized purchase to the District. The Department Manager having responsibility over the unauthorized purchase shall provide to the District's Executive Director a complete written justification for the specific unauthorized purchase to include a description of any disciplinary action taken and the corrective action intended to prevent recurrence of the incident. A copy of this justification shall be provided to the District's procurement staff in conjunction with the purchase request by the department requesting the confirmation purchase. All confirmation purchases request is to be forwarded to District's Procurement Department.