

VOLUSIA TRANSPORTATION PLANNING ORGANIZATION

PURCHASING MANUAL

DRAFT

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1. DEFINITIONS

Bid: A price offer made by a vendor to furnish specific Goods, Services and/or Construction in response to an invitation for bids/advertisement, request for proposal or a multi-step bidding procedure.

Chairperson: The Chairperson of the VTPO Board. ~~of Directors.~~

Change Order: A contract modification that changes the contract value or the contract performance time.

CCNA: Consultants' Competitive Negotiation Act, Section 287.057 of Florida Statutes

Consultant Services: Any narrow discipline wherein a known practitioner has, through education and experience, developed expert advisory and/or programming skills as a vocation; or any service performed primarily by vocational personnel which requires the analysis or certification of a professional before the services are acceptable to the user of the service; or any other advisory, study or programming activity, where the provider of any such consultant service is ordinarily obtained by means other than lowest price. This term shall not include construction or employment agreements.

Continuing Contract: A contract that allows for incremental execution using individual task orders. CCNA continuing contracts are for either specified (work of a specified nature) or unspecified work.

Contract: Means (a) a deliberate verbal or written agreement between two or more competent parties to perform a specific act or acts; (b) any type of agreement regardless of what it is called for the procurement of goods, services, consultant services or construction; ~~and (c) a purchase order.~~

Contractor: Any person having a contract with VTPO.

Designee: A duly authorized representative of a person holding a superior position.

DBE: Disadvantaged Business Enterprise

Emergency Purchase: A purchase of goods, services, consultant services and/or construction made without resort to any competitive process by VTPO.

Goods: Any tangible personal property other than real property.

Invitation for Bids/Advertisement: The solicitation document used for competitive sealed bidding for the purchase of goods, services and/or construction.

Item: A single separate unit, article, product, material or service.

MBE: Minority Business Enterprise

Proposal: An executed formal document submitted to the VTPO stating the goods, consultant services and/or services offered to satisfy the need as requested in the request for proposal.

Purchase/Procurement: Buying, purchasing, renting, leasing or otherwise acquiring any supplies, materials, equipment, goods, consultant services, construction and/or services required by the VTPO for public purposes in accordance with the law and VTPO procedures.

Qualified Bidder, Offerer, Proposer, Quoter, or Respondent: An individual or business entity that has submitted a bid, offer, proposal, quotation or response and that has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that gives reasonable assurance of good faith and performance.

Quotation: Any oral or written informal offer by a vendor to the VTPO to furnish specific goods and/or services at a stated price.

Request for Proposal (RFP): A solicitation of responses for goods, consultant services and/or services for which the scope of work, specifications or contractual terms and conditions cannot reasonably be closely defined. Evaluation of a proposal or response is based on prior established criteria which may include, but may or may not be, limited to price. The RFP shall state the relative importance of price and other evaluation criteria.

Request for ~~Quotation~~ Qualifications (RFQ): ~~An informal request, either oral or written, to solicit prices for specific goods and/or services. Used to gather vendor information from multiple firms in order to generate a qualified group of potential agencies. It eases the RFP review process by preemptively short-listing candidates which meet the desired qualifications. A RFQ is not considered an offer, and consequently, cannot be accepted by the organization to form a binding contract.~~

Responsive Bidder, Offerer, Proposer, Quoter or Respondent: An individual or business which has submitted a bid, offer, proposal, quotation or response that conforms in all material respects to the solicitation.

Services: The furnishing primarily of labor, time and/or effort by a Vendor, wherein the provision of goods or other specific end products other than documents relating to the required performance is incidental or secondary. This term shall not include construction or employment agreements.

Single Project Contract: A contract for a single defined project.

Small Purchase: Any budgeted purchase of goods, consultant services, services and/or construction in an amount of \$5,000.00 or less per contract. For purposes of this definition, reasonable or common components of a transaction shall be cumulatively considered part of a single contract such that no purchase shall be artificially divided so as to appear to fall within the definition of a small purchase.

Task Order: An individual request for products or services under a task order contract. These contracts are structured to allow incremental execution using individual task orders. Task Orders are not change orders.

VTPO: The Board ~~of Directors~~ of the Volusia Transportation Planning Organization as created by the "Interlocal Agreement Creating the Volusia Transportation Planning Organization" as recorded in the Public Records of Volusia County at Book 5262, Page 1520, and as may be amended from time to time.

Vendor: An actual or potential supplier of construction, goods, services and/or consultant services.

Vice Chairperson: The Vice Chairperson of the VTPO Board ~~of Directors~~.

2. INTRODUCTION

The purpose of this Purchasing Manual is to establish specific directions and guidelines for the members and agents of the VTPO to use in procuring goods and services for the VTPO. The provisions of this Purchasing Manual shall apply to every purchase of goods and services by the VTPO, unless an alternative purchasing procedure is required by federal or state law or otherwise authorized by a majority vote of the VTPO.

3. TRANSACTIONS EXEMPT FROM COMPETITIVE PROCUREMENT

Certain transactions cannot be handled through competitive bargaining and negotiations. These exempt transactions are:

- A. Acquisition of Real Property, such as land, easements, rights-of-way, existing buildings, structures, or improvements resulting from negotiations and approved by the VTPO;

- B. Court-ordered fines and judgments, resulting from litigation;
- C. Exceptional disbursement as authorized by the VTPO;
- D. Court-ordered fees, resulting from the judicial process, processed by the Clerk of the Court, and recorded against the budget for such fees;
- E. Cash transfers and investment transactions for fiscal management purposes, recorded against general ledger accounts;
- F. Accrued or current liabilities already charged against the budget, recorded against general ledger accounts;
- G. Debt service payments charged against budgetary accounts as authorized by the VTPO;
- H. Refunds of current or prior year revenues charged against budgetary accounts;
- I. Grant disbursements to federal, state, or local government agencies or to private groups or agencies;
- J. Insurance, including but not limited to, liability, property, medical and workers compensation insurance or payments from any loss fund established for such purpose;
- K. Dues and memberships in trade or professional organizations, subscriptions for periodicals, advertisements, copyrighted material, part-time, authorized hospitality expenses and fees and costs of job-related travel, seminars, tuition registration and training as allowed by the VTPO budget;
- L. Legal services, expert witnesses, court reporter services, and all other related expenses of claims and/or litigation;
- M. Consultant Services, other than those regulated by § 287.055, Fla. Stat.;
- N. Title insurance, title commitments, title searches and ownership and encumbrance searches; and
- O. Transactions by Interlocal Agreement.

4. PROCUREMENT PROCEDURES FOR STATE OR FEDERALLY FUNDED GRANT PROGRAMS

A. The VTPO recognizes that certain procurement procedures for state or federally funded grant programs may conflict with standard VTPO procedures. The VTPO is authorized to modify procurement procedures in order to comply with procurement procedures for state or federally funded grant programs provided that no modification may be less stringent than the corresponding VTPO procedure unless approved by the VTPO. The VTPO may waive any and all procurement regulations in order to comply with a federal or state law. In the case of LAP Certification, ~~and~~ Projects/Studies to be undertaken by and/or overseen by the VTPO, the VTPO will comply with the Florida Department of Transportation including ensuring that advertising for Bids are undertaken pursuant to 23 CFR 635.112(d)(e)(f)(g)(h) and 49 CFR 18.36, ~~and~~.

~~A.B.~~ As evidence of compliance with applicable requirements the VTPO will complete ~~comply with~~ the State of Florida Department of Transportation Form #525-010-48, Local Agency Program (LAP) Critical Requirements Checklist for Professional Services Certification, (as included in Appendix A of the VTPO Purchasing Manual) in all requests for Professional Services for Local Agency Programs (LAP).

5. CONFLICT OF INTEREST

- A. No official, employee or member of the VTPO shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
1. The official, employee or member,
 2. Any member of his or her immediate family,
 3. His or her business or personal partner, or
 4. An organization which employs, or is about to employ, any of the above or has a financial or other interest in the firm selected or considered for award.
- B. The VTPO's officials, employees or members shall neither solicit nor accept gratuities, favors or anything of monetary value exceeding \$25.00 from contractors, potential contractors or parties to sub-agreements.

- C. Violations of these standards of conduct may result in disciplinary action as set forth in Chapter 113, Part III, Florida Statutes provided that such disciplinary action does not conflict with the jurisdiction of the State of Florida Commission on Ethics.

6. PROCUREMENT OF GOODS AND CONTRACTUAL SERVICES FROM OTHER GOVERNMENTAL BIDS

Goods and contractual services may be purchased from other governmental and agency bids without additional competitive bidding if:

- A. The bid documents and selection procedures used by the other government or agency are consistent or more stringent than the VTPO's purchasing regulations and permit other governments to purchase from the bid; and
- B. The purchase is approved in accordance with all requirements of this manual and a separate contract or amendment thereto, is executed.

7. PETTY CASH

- A. Petty Cash purchases must be pre-approved by either the Executive Director or the Chief Financial Officer, will be limited to immediate need and/or small cash purchases which do not exceed \$100.00, and require a receipt should reimbursement be necessary.
- B. Misuse of petty cash funds is subject to non-reimbursement and personal liability.

8. CONTRACT AWARD POLICY

- A. Procurements shall comply with all applicable Florida Statutes.
- B. Procurements are broken down as follows:
 - 1. Purchases up to, and including \$5,000, shall follow procedures outlined in **Section 11: Small Purchases** in this document, and shall be approved by the VTPO Executive Director.
 - 2. Purchases from \$5,001, up to and including \$25,000, shall be approved by the VTPO Executive Committee.
 - 3. Purchases from \$25,001 and over shall be approved by the VTPO Board of Directors.

- C. Contracts and change orders that are to be awarded by the VTPO will be presented to the VTPO Board on the agenda of its regularly scheduled meetings prior to awarding.

9. BID OR REQUEST FOR PROPOSAL PURCHASES

- A. Competitive Sealed Bidding will be required for the procurement of items of over \$25,000 where:
 - 1. Precise specifications of the needed product are known and can be described in an invitation to bid;
 - 2. Price is the only variable; and
 - 3. It is in the VTPO's best interest to do so.
- B. Requests for proposal (RFP) are appropriate when the exact product or solution to respond to a need or problem is not known. RFP's shall provide a statement of need or problem description for which proposed solutions are sought. Such RFP's may include specifications, scope of services and proposed contractual terms and conditions to which proposals must respond. RFP's shall encourage the proposal of alternative specifications, scope of services and proposed contractual terms and conditions if such alternatives are proposed as the best method of meeting the need stated or solving the described problem.
- C. Bid/Proposal Process is as follows:
 - 1. The Executive Director of the VTPO shall identify the desired purchase during a scheduled VTPO meeting. All specifications, budget information and relevant bid information shall be included.
 - 2. The Executive Director of the VTPO shall put the procurement request into the proper form and complete the legal advertisement and bid/contractual documents.
 - 3. The Executive Director of the VTPO will then develop the specifications and award criteria and identify a Selection Committee whose members shall be composed of a member of the VTPO staff, designated members of the VTPO's Technical Coordinating Committee and a representative of FDOT District 5 as an adviser & projects above \$200,000 may have a TPO Board member.

4. Legal documents will be developed, maintained and reviewed by the VTPO's Legal Counsel.
5. The VTPO shall provide public notice in the form of a legal advertisement that shall be posted or published a minimum of fifteen (15) calendar days prior to awarding those procurements expected to cost up to \$100,000, and a minimum of thirty (30) calendar days prior to awarding those procurements expected to exceed \$100,000.
6. The Selection Committee will evaluate Bids/Proposals based on the requirements set forth in the Invitation to Bid/Request for Proposal. Award criteria shall be, to the maximum extent feasible, objectively measurable. No criteria may be used for evaluation that has not been set forth in the Invitation to Bid/Request for Proposal. Bids shall be publicly opened in the presence of one or more witnesses.

D. Bid/Proposal Awards:

1. If the contract is to be awarded on the basis of price, the contract must be awarded to the qualified and responsive bidder who submits the lowest bid price. All bid results and recommendations shall be posted at the VTPO office for a period of five (5) business days. The contract shall be awarded with reasonable promptness by means of a written notice to such bidder. The Selection Committee shall at all times, except when expressly waived, reserve the right to reject all bids and rebid or to elect not to proceed.
2. When it is impractical initially to prepare a purchase description to support an award based on price, the Selection Committee may conduct multi-step sealed bidding, whereby an initial invitation for bids/advertisement is issued requesting the submission of unpriced offers, or information relating to the experience and capabilities of the prospective bidders, to be followed by an invitation to bid/advertisement limited to those bidders whose offers or experience and capabilities have been determined to be acceptable under the criteria set forth in the initial invitation for bids/advertisement.

E. Awards based on Proposal:

1. ~~1.~~ The Selection Committee shall make a recommendation to the VTPO as to its assessment of the proposal that is deemed to

be most responsive and qualified and is determined to be the most advantageous to the VTPO. Evaluation of proposals shall be based on the evaluation factors set forth in the request for proposals.

2. Notice of the intent to award shall be posted at the location set for proposal submission for a period of five (5) business days. The award shall be made in accordance with the criteria of the request for proposal. In the event only one responsive proposal is received, the VTPO reserves the right to award to the sole proposer, direct staff to re-advertise the request for proposal with or without making changes to the evaluation factors or elect not to proceed.

F. The following apply to all awards:

1. All awards made by the VTPO, whether obtained by invitation to bid/advertisement, or request for information, proposal or quotation, shall consider whether the prospective contractor/vendor meets the standard of qualification. Factors to be considered in determining whether the standard of qualification has been met shall include whether a prospective contractor/vendor has:
 - a. Made available the 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;
 - b. A satisfactory record of performance;
 - c. A satisfactory record of integrity;
 - d. The legal ability to contract with the VTPO; and
 - e. Supplied all necessary information in connection with the inquiry concerning responsibility, including, but not limited to, any licenses, permits or organization papers required.
2. The prospective contractor/vendor shall supply information requested by the VTPO concerning qualifications. If such contractor/vendor fails timely to supply the requested information, the VTPO shall base the determination of qualification upon any available information, or may find the

prospective contractor/vendor not qualified if such failure is unreasonable.

3. All contracts shall clearly set forth a defined beginning and term of service.~~term.~~ All continuing contracts shall clearly set forth a total maximum contract value that may not be exceeded.

10. SELECTION OF PROFESSIONAL SERVICES PROVIDERS

Professional Services within the scope of the practice of planning and/or transportation studies will be acquired in accordance with Section 287.057, Florida Statutes, the Consultants' Competitive Negotiation Act (CCNA).

- A. The following criteria will be established prior to initiation of a request for proposal which falls within the jurisdiction of the CCNA:

1. The VTPO shall request solicitations for a specific Professional Services discipline by preparing a Request for Qualifications (RFQ).
2. The RFQs from interested firms (the "Proposers") indicate their interest in providing the requested service and at a minimum shall include:
 - a. A request for specific and general information on how the Proposer will proceed with the project including written documentation of the Proposer's expertise and ability to perform the requested service;
 - b. Specific instructions on how, when and where the proposals shall be submitted including the date the proposal will be opened;
 - c. A requirement that the proposal be submitted as a sealed package;
 - d. The solicitation shall include a statement that the Proposer shall not include proposed compensation as part of the proposal;
 - e. A statement that the VTPO reserves the right to reject all irregular proposals or to reject all proposals if it is deemed by the VTPO to be in the best interest of the VTPO; and
 - f. The factors which will be considered in selecting the most qualified Proposer.

C. Continuing Contract.

A continuing contract for professional services may be entered into in accordance with § 287.055, ~~Florida Statutes~~, between the VTPO and a firm to provide continuing professional services in response to task orders. Continuing contracts entered into after the adoption of these policies shall have a termination date and a total maximum value that may not be exceeded.

11. SMALL PURCHASES

- A. No purchase of goods, consultant services, services and/or construction shall be artificially divided so as to fall within the small purchase exemption.
- B. Small purchases include any item which is ~~less than~~ \$5,000 or less, and are separated into three categories: less than \$1,000.00; \$1,000.01 to \$2,500; and \$2,500.01 to \$5,000.
1. Purchases less than \$1,000 require no quotes.
 2. Purchases between \$1,000.01 and \$2,500 shall be based on three telephone quotations documenting the person giving the quote, date, time, pricing and all relevant information. Where time permits, written quotations should be obtained and purchases shall be made on the basis of three written quotations. The written quote may be faxed, ~~or~~ mailed, emailed or delivered to the requesting department. This written quote must clearly identify the vendor making the quote and the total price being quoted. Summary quotes must be included within the text of the requisition, and the original quote received retained by the department for future reference. Quote prices will not be released to competing vendors until final determination for the purchase has been made.
 3. Purchases between \$2,500.01 to \$5,000 will require three written quotations. Upon obtaining a written quote, the quote may be faxed, ~~or~~ mailed, emailed or delivered to the VTPO. This written quote must clearly identify the vendor making the quote and the total price being quoted. The written quotes must be included within the requisition (by separate attachment) and the original quote received retained by the department for future reference. Quote prices will not be released to competing vendors until final determination for the purchase has been made.

4. Small purchases may be formally bid. If bid, then all terms within the bid section of this manual will apply.

12. SOLE SOURCE PROCUREMENTS

- A. A determination of sole source may be made by the VTPO, after conducting a good faith review of available sources, which demonstrates there is only one source for the required supply, service or item. A record of determination of the sole source shall be maintained by the VTPO.
- B. For a commodity or service to be deemed as the sole source procurement, the VTPO must have the appropriate documentation proving at least one of the following:
 1. The brand, make or specifications are available only from one source or from the original manufacturer;
 2. A different brand, make or specifications would be incompatible with currently owned equipment;
 3. An emergency exists and the item is required immediately to avoid threat to the health, safety or welfare of persons or property; and
- C. The end user must document that a good faith effort has been made in seeking other sources. All documentation is to be sent to the VTPO where sole source procurement justifications are to be maintained.

13. EMERGENCY PROCUREMENTS

An emergency procurement is the purchase of goods, services, consultant services and/or construction made non-competitively because, in the sole judgment of the VTPO Chairperson or the Executive Director of the VTPO, that such acquisition is necessary to remedy or mitigate the harmful effects of any actual or threatened occurrence which may interfere with the conduct of normal operations or remedy or correct a condition which may pose an imminent or existing threat to the health, safety or welfare of persons or property.

14. CONTRACT FORM

The VTPO shall determine the form of contract documents. Standard legal documents shall be developed and maintained by the VTPO's Legal Counsel. The approved standard legal documents may be used in developing specific contracts hereunder and presented to legal counsel prior to approval by the VTPO for approval as to form and correctness.

15. VTPO PROCUREMENT RECORDS

A. Procurement Files

Any and all procurement determinations relating to the solicitation, award or performance evaluation of Invitations to Bid, Request for Proposals or Expressions of Interest for Professional Services shall be maintained in the VTPO files.

B. Retention of Procurement Records

All procurement records shall be retained and disposed of by the VTPO in accordance with records retention guidelines and schedules approved by the Division of Archives of the State of Florida. If a contract is funded, in part or in whole, by a federal agency, then all procurement records pertaining to that contract shall be maintained for the time specified in the funding contract.

16. BID SPECIFICATIONS

A. Maximum Practicable Competition

Specifications shall be drafted in a manner to ensure overall economy (without sacrificing quality) for the purposes intended and shall promote maximum free and open competition in satisfying the VTPO's needs, and shall not be unduly restrictive. Specifications shall not include proprietary, exclusionary or discriminatory requirements. The policy enunciated in this Section applies to all specifications, including, but not limited to, those prepared by architects, engineers and all other contracted consultants.

B. Brand Name or Equal Specifications

1. Brand name or equal specifications may be used when the VTPO determines that:

- a. No adequate design or performance specification or qualified products list is available;
 - b. Time does not permit the preparation of another form of purchase description, not including a brand name specification;
 - c. The nature of the product or the nature of the VTPO's requirements makes use of a brand name or equal specification suitable for the procurement; and
 - d. Use of a brand name or equal specification is in the VTPO's best interest.
- C. Brand name or equal specifications shall seek to designate at least three as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- D. When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of the brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and are not intended to limit or restrict competition.

17. BID SECURITY

Bid Security may be required for all competitive sealed bids as set forth in the bid documents.

18. AUTHORIZATION TO DEBAR VENDOR

- A. The VTPO has the authority to seek the debarment of vendors. Debarment means that a vendor is prohibited from submitting bids or proposals to perform or otherwise contract with the VTPO.
- B. The causes for debarment include:
 - 1. Entry of a plea of guilty, no contest or nolo contendere to or conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in performance of such contract.
 - 2. Entry of a plea of guilty, no contest or nolo contendere or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or

receiving stolen property, or any other offense indicating lack of business integrity of business honesty which currently, seriously, and directly affects responsibility as a VTPO contractor.

3. Entry of a plea of guilty, no contest or nolo contendere or conviction under state or federal anti-trust statutes rising out of submission of bids or proposals.
4. Violation of provisions of contracts as follow:
 - a. Failure without good cause to perform in accordance with specifications or within the time limits provided in the contract;
 - b. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts within the previous three (3) years, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - c. Refusal to enter into a contract with the VTPO by failing to provide bonds, insurance, or other required certificates within the time periods as specified in bid/RFP response;
 - d. Refusal to accept a purchase order, agreement or contract or to perform thereon provided such order was issued timely and in conformance with the offer received;
 - e. Presence of principals or corporate officers in the business or concern who were principals within another business at the time when the other business was suspended within the last three (3) years under the provisions of this section;
 - f. Violation of the ethical standards set forth in state law;
 - g. Providing anything of value, including but not limited to, a gift, loan, reward, promise of future employment, favor or service to any employee to influence the award of contract or purchase of items from a contract; or
 - h. Any other cause the VTPO determines to be serious and compelling as to affect the credibility as a VTPO vendor, including debarment by another government entity for any cause listed in this section.

C. Recommended Decision.

The Chairperson of the VTPO shall issue a notice letter which advises a vendor that they have been debarred. The notice shall state the reasons for the action taken and inform the vendor of its rights to an appeal to the VTPO.

D. Appeal to the VTPO.

1. Any person dissatisfied or aggrieved with the notification of the VTPO's determination regarding debarment must, within ten (10) calendar days of such notification, appeal the determination in writing in accordance with the hearing procedures contained in the section.
2. Hearing Date: Upon receipt of the request for hearing, the Chairperson~~man~~ of the VTPO shall give all parties prior notice of a hearing date and time at least five (5) calendar days before the hearing date. The vendor shall be given the opportunity at such hearing to demonstrate why the recommendation of the VTPO should be denied.
3. Decision: The Chairperson~~man~~ of the VTPO shall render a written decision within thirty (30) calendar days of the hearing. Any decision to debar a contractor shall be in effect for a period not to exceed three (3) years.

D. Appeals.

An aggrieved party may appeal the decision of the VTPO and such appeal shall be filed within ten (10) days of the notification of the written decision by the VTPO. The VTPO's decision to debar a person or business shall be final and conclusive unless the debarred person files a timely appeal of the VTPO's decision pursuant to the Florida Rules of Appellate Procedure.

F. Reinstatement.

A person or corporation may be reinstated to do business with the VTPO under the following conditions:

1. Discovery of new and material evidence not previously available;
2. Dismissal of indictment or reversal of conviction; or

3. Bonafide change in ownership or management sufficient to justify a finding of present responsibility.

The request for reinstatement shall be forwarded in writing to the Chairperson of the VTPO and the VTPO shall determine whether to reinstate based on written submission of evidence to the above referenced office, without further hearing. Upon consideration of the written submission, the VTPO renders the decision in writing within thirty (30) days from their decision.

19. BID PROTEST PROCEDURE

- A. Any protest concerning bid or request for proposal specifications or requirements must be made within seventy-two (72) hours from the time the aggrieved person knew or should have known of the facts giving rise to the protest, in any case, at least twenty-four (24) hours prior to the bid opening. Failure to timely protest bid specifications or requirements constitutes a waiver of the ability to protest specifications or requirements.
- B. Any protest (other than one concerning bid specifications or requirements) which is filed after bid opening, shall be made within seven (7) calendar days following posting of the award of contract by the VTPO.
- C. The protest shall be in writing addressed to the Executive Director of the VTPO, who shall consult with the VTPO's Legal Counsel.
- D. If the protest is not resolved by mutual agreement, the VTPO shall promptly issue a decision in writing. The written decision shall:
 1. State the reasons for the action taken;
 2. Inform the person protesting of his right to review of the decision;
 3. State that request for review by the VTPO must be filed with the Chairperson of the VTPO within seven (7) calendar days from the date of the decision; and
 4. The decision shall be mailed by certified mail return receipt requested to the protestant.
- E. Upon filing of a timely review request, the VTPO shall consult with the VTPO's Legal Counsel and review the matter. The VTPO shall issue a written decision which states the reasons for the action taken. The

decision shall be mailed by certified mail return receipt requested to the protesting party and any other intervening party.

In the event of a timely protest, the VTPO shall not proceed further with solicitation or the awarding of the contract until all the VTPO administrative remedies have been exhausted or until the VTPO determines that award of the contract must be made without further delay in order to protect substantial interests of the VTPO.

The decision of the Volusia Transportation Planning Organization shall be final.

20. DBE/MINORITY BUSINESS PARTICIPATION

- A. All contractors are encouraged to assist Florida's small and minority businesses in doing business with the VTPO. Each contractor in assisting small and minority businesses will help to expand and develop the small and minority business sector of the counties represented by members of the VTPO.
- B. Definitions
 - 1. *"Certified Minority Business Enterprise"* means a business enterprise which has been certified by the State of Florida Department of Management Services as a minority business enterprise in accordance with the provisions of the "Small and Minority Business Assistance Act of 1985".
 - 2. *"Minority Business Enterprise"* means any small business concern which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least fifty-one percent (51%) owned by minority persons, and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession.
 - 3. *"Minority Person"* means a lawful permanent resident of Florida who is:
 - a. A Black American – a person having origins in any of the Black racial groups in Africa.
 - b. A Hispanic-American – a person of Spanish or Portuguese culture, with origins in Mexico, South America, Central America, or the Caribbean, regardless of race.

- c. An Asian American – a person having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Island, including the Hawaiian Islands prior to 1778.
 - d. A Native American – a person who having origins in any of the Indian Tribes of North America prior to 1835.
 - e. An American woman.
4. “*Small Business*” means an independently owned and operated business concern which employs fifty (50) or fewer full-time employees, and which has a net worth of not more than one million dollars (\$1,000,000.00). As applicable to sole proprietorships, the one million dollars (\$1,000,000.00) net worth requirement shall include both personal and business investments.

C. VTPO Selection Procedures

- 1. The VTPO shall make a good faith effort to provide interested minority business enterprises or minority persons with adequate information about the plans, specifications and requirements of contracts or the availability of jobs.
- 2. The VTPO shall make a good faith effort to effectively use services and resources of available minority community organizations, minority contractors’ groups, local, state, and federal minority business assistance officers, and other organizations that provide assistance in the recruitment and placement of minority business enterprises or minority persons; and
- 3. The VTPO shall make a good faith effort to provide written notice to a reasonable number of minority business enterprises that their interest in contracting with VTPO is being solicited in sufficient time to allow the minority business enterprises to participate effectively.

- D. The Minority Business Enterprise (MBE) Directory for the VTPO shall be based upon the vendors list of certified minority business enterprises prepared and maintained by the State of Florida Department of Management Services pursuant to Section 287.0343, Florida Statutes. In addition, any business which the Small Business Administration has identified as an 8(a) firm shall be eligible for listing in the Directory. The purpose of this Directory is to enable the VTPO's prime contractors to identify and utilize minority business enterprises.
- E. The above sections notwithstanding, the VTPO shall comply with the goals and procedures as laid out in the VTPO's Disadvantaged Business Enterprise (DBE) program as adopted on March 27, 2007.

APPENDIX A

STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY PROGRAM (LAP) CRITICAL REQUIREMENTS CHECKLIST FOR PROFESSIONAL SERVICES CERTIFICATION

FORM # 525-010-48

LOCAL AGENCY PROGRAM (LAP) CRITICAL REQUIREMENTS CHECKLIST FOR PROFESSIONAL SERVICES CERTIFICATION

Local Agency:

Certification Type: ☒ Full ☒ Project Specific

1. Fair, open, and competitive selection of qualified consultants	[ref. 40 USC 1101-1104 ("Brooks Act"), 23 USC 112(b)(2)(A), 23 CFR 172.5(a)(1), 287.001, and 287.001, 287.055(4), Florida Statutes, http://www.fhwa.dot.gov/programadmin/172qa.cfm]	<p>Compliance Indicators:</p> <p>A For 100% of contracts where professional services must be procured for a project, the basic construction cost of which is estimated to exceed the threshold amount for Category Five (ref. 287.017, Florida Statutes), or for a planning or study activity when the fee for professional services exceeds the threshold amount provided for Category II (ref. 287.017, Florida Statutes) except in cases of public emergencies, the local agency selection process shall adhere to the following:</p> <ol style="list-style-type: none"> (1) Project is publicly announced in a uniform and consistent manner. [ref. 287.0555(3)(a)1, F.S.] (2) Consultant qualification is verified. Local Agencies will use consultants prequalified by the Department for all projects on the State and National Highway System and all off system critical projects as defined in the Local Agency Program Manual Chapter 23 Section 23.1.3. (3) Public meetings are held when necessary, are properly noticed, and minutes taken or recorded. As a result of Florida legislation, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from public records until such time as the agency provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever is earlier. Oral presentations, negotiations, vendor Q & A sessions, and discussions of negotiations strategies are all exempt meetings. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record. The recording is exempt until such time as the agency provides notice of an intended decision to make a contract award or until 30 days after opening the bids, proposals, or replies, whichever occurs earlier. (Chapter 2011-140, Laws of Florida) (4) All staff in a decision making or recommendation capacity are free from conflicts of interest, or have recused themselves
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		<p>where conflicts exist. [ref. 23 CFR 1.33, FOOT Topic 375-030-002-1 (1)]</p> <p>(5) Competing firms are evaluated on the basis of capabilities, adequacy of personnel, past record, experience, and other applicable factors.</p> <p>(6) No fewer than three firms are shortlisted to submit proposals.</p> <p>(7) Factors considered in shortlisting include: ability of professional personnel; past performance; willingness to meet time and budget requirements; recent, current & projected workloads; and volume of work previously awarded to each firm. [ref. 287.055(4)(b), F.S.]</p> <p>For federal-aid contracts, a small locality preference criterion of no more than 10 percent may be used. This criterion cannot be based on political boundaries and should be used on a project-by-project base for projects where a need has been established. Further, if a firm currently outside the locality criteria indicates as part of its proposal that it will satisfy that criteria in some manner, such as establishing a local project office, it should be considered to have met the locality criteria.</p> <p>Please note the use of price/cost elements or in-state preference as part of the selection criteria on federally funded contracts is prohibited. [ref. 40 U.S.C. 1101] http://www.fhwa.dot.gov/programadmin/172qa.cfm</p> <p>B. Per Federal and State regulations, certain professional services contracts can be exempt from formal advertising and selection using the process called "Small Purchase" [ref. 23 CFR 172.5(a)(2)]. In the event that a contract is procured under the small purchase procedure, the total fee cannot exceed the appropriate limits established in 48 CFR 2.101 (currently at \$150,000), or the State limit, whichever is lower at the time of the review. Per state law, contracts are exempt from formal advertising and selection when the fee for professional services for a planning or study activity is less than the threshold amount provided in Section 287.017, F.S., for Category Two (currently \$35K), or when the FDOT's estimated basic construction cost is less than the threshold amount provided by Section 287.017, F.S., for Category Five (\$325K). Both federal and state thresholds must be complied with. Where state and federal limits</p>
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		<p>differ, the lesser threshold is the applicable restriction. In accordance to small purchases procedures, at least three qualified consultants are considered and ranked in order of preference.</p>
<p>2. Negotiations conducted with the most qualified firm to obtain fair, competitive, and reasonable price.</p>	<p>[Ref. 40 USC 1104, 287.055 (5), Florida Statutes]</p>	<p>Compliance Indicators:</p> <ul style="list-style-type: none"> A. In-house staff-hour estimates done to check reasonableness of consultant estimate. B. Detailed analysis of costs proposed by consultant. C. When consultant negotiations are complete, the Local Agency will submit a copy of the executed consultant agreement, including exhibits, to the District LAP Administrator. D. The negotiator shall use all resources available to conduct effective negotiations, including but not limited to, the refined scope of work, the evaluation factors and their relative importance, and the Local Agency's cost estimate as required. E. The contracting agency shall maintain records of negotiations to document negotiation activities. Records shall be maintained in accordance with the provisions of 49 CFR 18.42. F. The agency head shall attempt to negotiate a contract with the most highly qualified firm selected in accordance with 40 USC 1103. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached. <p>For more details on Negotiations, consult the FOOT Negotiation Handbook at: http://www.dot.state.fl.us/procurement/Negotiations.shtm</p>
<p>3. Overhead rates (indirect rates)</p>	<p>[ref. 23 USC 112(b)(2)(C)-(D) and 23 CFR 172.7(b)]</p>	<p>Overhead rates shall not be capped. Contracting agencies shall use the indirect cost rate established by an audit report prepared by an independent Certified Public Accountant, or a State or Federal agency. A lower indirect cost rate may be used if submitted by the consultant firm; however the consultant's offer of a lower indirect cost rate shall not be a</p>

		<p>condition of contract award. The contracting agencies shall apply these indirect cost rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and the indirect cost rates shall not be limited by any administrative or de facto ceilings. The consultant's indirect cost rates for its one-year applicable accounting period shall be applied to the contract, however once an indirect cost rate is established for a contract it may be extended beyond the one year applicable accounting period provided all concerned parties agree.</p> <p>B. Direct salary multipliers shall not be capped. Any limitation on direct salary multipliers would have the effect of creating an administrative or de facto ceiling on the indirect cost rate, which is not in accordance with Federal Aid Highway Program requirements, as specified in 23 U.S.C. 112(b)(2) (D) and 23 CFR 172.7(b).</p>
4. Use of DBE and MBE consultants.	(ref. 49 CFR 26.51, and 337.139, Florida Statutes)	<p>Compliance Indicators:</p> <p>A. Use of DBE subs is encouraged. There should not be any DBE preference selection criteria in the selection process. All the race-neutral procedures as described in 49 CFR 26.51 may be used to broaden the pool of proposals to potentially include DBE and/or other smaller firms. The Local Agency will review each project to determine if the work allows for DBE participation. Based on the type of services required, the Local Agency may review lists of DBE certified firms in the identified services. An example is the database of DBE firms available on the FOOT Equal Opportunity Office (EOO) website. This list can be accessed at the following link: https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/srch_desc.asp</p> <p>The Local Agency should also establish a DBE availability goal percentage. This DBE availability goal percentage is not a fixed contract requirement. It is a guide to inform the consultant of the work that could reasonably be contracted to a DBE. The Local Agency reports data on actual payments, minority status, and the type of work of all subconsultants/subcontractors and major suppliers.</p> <p>B. Use of MBEs is encouraged.</p> <p>C. DBE/MBE participation and compliance monitored and validated by the Local Agency.</p>

5. Compliance with Departmental, State, and Federal contracting requirements.

Compliance Indicators:

A. State Requirements:

- (1) Advertisements, selection results, and public meetings are adequately noticed.
- (2) Any Tangible Assets are identified in contract agreement.
- (3) Professional Liability Insurance (ref. 337.106, F.S.)
Any firm rendering architectural, engineering, or other professional services shall have and maintain during the period the services are rendered a professional liability insurance policy or policies with a company or companies authorized to do business in the state affording professional liability coverage for the professional services rendered, in an amount deemed sufficient.

B. Federal Contracting Requirements:

- (1) The process and procedures used by the Local Agency to procure and administer Engineering and Design Related Service Contracts must comply with 23 CFR 172 and 49 CFR 18. The Local Agency is required to have written procedures that describe their procurement methods and these procedures are to be approved by the FOOT through the LAP certification process.
- (2) Terms for Federal Aid Contracts incorporated in the Professional Services Agreement. An example of the federal aid terms to be incorporated is attached.
- (3) Federal forms: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Federal Aid Contracts; Certification for Disclosure of Lobbying Activities on Federal-Aid Contracts; Standard Form-LLL, Disclosure of Lobbying Activities Form (where necessary).
- (4) All full oversight projects must be approved by the FHWA. A copy of the request for proposal, then subsequently the draft contract together with a cost estimate for services will be provided to the District LAP Administrator for review and approval by FHWA. A cost estimate for this purpose will be completed using independent staff hour estimates prepared by the Local Agency. A copy of the executed contract should be sent to FHWA after contract execution.
- (5) No federal funding is generally allowed for General Consultant contracts (Rule 14-75.004 Florida Administrative Code defines general consultant services as including

		<p>"administration, support, and management of engineering, architectural, surveying, planning, or right of way acquisition and appraisal activities). [ref. 23 CFR 172.9(d)]</p> <p>(6) For multiple project contracts: scope is specific, not general boiler plate. Scope identifies project location, and project limits for each location. Operating margin established as lump sum- fixed fee. If the contract method of compensation is established as cost reimbursable, the fee for operating margin must always be paid as a fixed fee (lump sum). The cost plus a percentage of cost and percentage of construction cost methods of compensation shall not be used (Cost plus percentage of cost means the operating margin is paid as percentage of the costs invoiced.) [ref. 23 CFR 172.5(c)]</p> <p>(7) Conflict of Interest requirements: For PD&E projects, certification is required that neither the consultant firm nor any of the principals of that firm have any financial or any other interest in the outcome of the project will be included and is required to be submitted with the proposal. (ref. 23 CFR 1.33) A consultant firm, or its affiliate, that is the Engineer of Record on a design project shall not be considered eligible to compete as a prime consultant for Construction Engineering Inspection services on that same project. (ref. 23 CFR 1.33, FOOT Procedure No. 375-030-006)</p>
6. Contract documents.		<p>Compliance Indicators: A. Standard Professional Services Agreement (1) Certified Local Agencies must use a standard consultant agreement as a part of their procedures. The Department must have approved this consultant agreement.</p>
7. Proper use of contract amendments.		<p>Compliance Indicators: Supplemental Amendments: (1) All supplemental services within original intent of the agreement. (2) Prior to negotiations, independent assessment of staff hours and quantities for proposed supplemental services (3) Negotiations are documented for 100% of supplemental amendments.</p>

		<p>(4) Cost analysis is performed to ensure fee for supplemental services is fair, competitive, and reasonable.</p> <p>(5) The supplemental agreement should include a revised scope of work that clearly details the additional work the consultant is required to perform. The agreement may also be amended to extend the time for performance.</p> <p>(6) Supplemental agreements (including scope document) should be sent to the FOOT for review and concurrence prior to execution.</p>
<p>8. Managing and Monitoring the Agreement. All Local Agencies shall assign one of their personnel as Project Manager to monitor and control the consultant's performance and ensure that quality products are received.</p>		<p>Compliance Indicators:</p> <p>A. Local Agency has independent estimate of costs for work involved for supplements to existing agreements, for 100% of supplemental amendments.</p> <p>B. Local Agency ensures consultant compliance with terms of agreement.</p> <p>C. Consultant progress reports monitored to ensure that progress follows schedule, and consultant reports problem areas and takes corrective action.</p> <p>D. Time for completion of each agreement monitored to ensure that the consultant does not exceed time limitations.</p> <p>E. Invoices reviewed to ensure that they correspond to work performed. Local Agency keeps cumulative cost records to ensure that costs are allowable, allocable, and reasonable. Controls established to prevent payment greater than the agreement amount</p> <p>F. Consultant monitored to ensure compliance with EEO provisions of agreement.</p> <p>G. When work is completed, Local Agency ensures that the consultant has met all terms and conditions of the agreement and has completed all services under the agreement before the final release of the consultant.</p> <p>H. Complete consultant performance evaluation when work is completed. [ref. 23 CFR 172.9(a)(5)]</p>
<p>9. Planning contracts</p>	<p>(ref. 337.1075, Florida Statutes, 23 CFR 420.121 U)) 49 CFR 18.36</p>	<p>Compliance indicators:</p> <p>A. Planning services to be procured in accordance with Florida Statute s.287.055 Consultant Competitive Negotiation Act selection process.</p>

Local Agency: I hereby certify that the Local Agency has reviewed the Federal and State requirements set forth in this checklist and agrees to comply with the requirements.

Signature

Position Title

Name (Printed)

Date

District Representative: I hereby certify that the Local Agency's professional services process has been reviewed for compliance with the Federal and State requirements set forth in this checklist.

Signature

Position Title

Name (Printed)

Date

LOCAL AGENCY PROGRAM (LAP) CRITICAL REQUIREMENTS CHECKLIST FOR PROFESSIONAL SERVICES CERTIFICATION INSTRUCTIONS

The purpose of this form is to provide a guide to the Local Agency seeking certification or recertification of qualifications in LAP and the District Professional Services LAP certification team member. The form lists the critical requirements that the Local Agency consultant procurement process must follow for LAP consultant projects, where reimbursement is being sought. These requirements are based on the following regulations: 40 USC 1101-1104 ("Brooks Act"), 23 USC 112(b) (2) (A), 23 CFR 172.5(a) (1), 287.001, and 287.001, 287.055(4), Florida Statutes.