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PURCHASING****Subject
FORMAL PROCUREMENTS****I. PURPOSE**

To establish formal procurement policies for those contracts that will exceed \$40,000¹ to ensure that:

- A. All procurements are best suited to the needs of Pace and are obtained at the lowest possible price or for the best overall value in accordance with Pace's Ordinance SBD 15-21, Regulations Governing Public Bidding as amended.
- B. All procurement funded with federal monies and/or grants from the federal government, State of Illinois, or Regional Transportation Authority (RTA) shall be handled in accordance with Federal Transit Administration (FTA) Circular 4220.1F (as amended) or most recent version.
- C. To the extent possible all non-federally funded procurements will also be processed in accordance with FTA Circular 4220.1F (as amended) unless waived by the Chief Procurement Officer or his/her designee. For all non-federal procurements over \$40,000 RTA procurement and regulations as established under Section 4.06 of the RTA shall apply and cannot be waived.
- D. Pace allows for full and open competition as the preferred method of procurement.
- E. Pace only allows for sole source or non-competitive procurements when it is fully justified and allowable, in accordance with Pace's Ordinance SBD 15-21 as amended and FTA Circular 4220.1F (as amended).
- F. All Pace staff shall abide by Pace's Ethics Ordinance No. SBD 04-61 and State of Illinois Public Act 93-617, which detail standards of conduct, specifically as they pertain to the procurement process.
- G. Pace negotiates pricing whenever feasible in non-competitive procurement situations.
- H. Pace treats all vendors fairly in the bidding process.
- I. Pace obtains all appropriate approvals before contracts are awarded, in accordance with Pace's administrative policy.

II. GENERAL PROCUREMENT GUIDELINES

Consistent with Pace's Ordinance SBD 15-21 and the Regional Transportation Authority

¹ The exception would be costs associated with employee compensation and benefits and other costs covered under Pace's Check Request Procedures (refer to FI-06).

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(RTA) Act, 70 ILCS 3615/1.01 et seq. as may be applicable), formal procurement procedures shall be followed for amounts greater than \$40,000 in aggregate value. Although FTA Circular 4220.1F (as amended) sets the small purchase threshold at \$100,000, Pace adheres to the more stringent requirement of \$40,000, according to Ordinance SBD 15-21 and the RTA Act.

Purchases that exceed \$40,000 require full and open competition unless fully justified as sole source or non-competitive procurements. Formal competitive procurement methods (sealed bid/competitive proposals/letters of interest and qualifications) must be utilized and most procurements of this nature are subject to federal and/or state requirements as may be applicable.

It is against Pace policy and a violation of FTA Circular 4220.1F (as amended) to separate related costs (i.e., splitting procurements) for the express purpose of avoiding the competitive bid process.

Additionally, apart from inconsistent requirements imposed by Federal laws or Federal regulations, Pace shall comply with the requirements of 49 U.S.C. § 5325(h) and shall not use exclusionary or discriminatory specifications in its procurements.

During the conduct of any competitive procurement at Pace, extreme care will be exercised to ensure that each vendor is treated fairly and that all vendors are given an equal opportunity to participate. Pace's procurement documents will not include provisions that knowingly or unduly restrict competition or place unreasonable requirements on firms in order for them to qualify to do business with Pace. In addition, Pace will ensure that specifications/scopes of work are written in a clear and concise manner and that no arbitrary action will occur in the procurement process.

Pace Board approval for Sole Source awards that exceed \$100,000, Requests for Proposals/LIQs in excess of \$250,000, and Information for Bids that exceed \$500,000 is required prior to contract award. Appropriate internal approvals will be obtained after the Pace Board approval prior to formal execution of the contract by the Executive Director. For any items that exceed \$40,000 (but that do not exceed \$100,000), a report is prepared and submitted to the Board. These reports are submitted to the board after contract award. Appropriate internal approvals will also be obtained before contracts that exceed \$40,000 are formally executed by the Executive Director. These internal approval processes (known commonly as red and green folder approval processes) are outlined in detail in the Purchasing Department Roles and Responsibilities – Operating Manual².

All purchases in excess of \$40,000, i.e., all formal procurements, are handled by the

² This Manual will detail all internal processes and specific tasks and duties to be handled by the Purchasing Department.

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Purchasing Department at Headquarters. Division buyers and Materials Management staff are strictly prohibited from processing any procurement in excess of \$40,000.

Through Oracle's requisitioning system, technical specifications/scopes of work, and independent cost estimates, and/or any other specific requirements shall be prepared by the appropriate Requesting Department Manager and submitted to the Purchasing Department, who will prepare and publicly release an Invitation for Bid (IFB), a Request for Proposal (RFP), or Letters of Interest and Qualifications (LIQs) as appropriate. In limited situations, a Request for Information (RFI) may be issued to assist Pace in developing a scope of work/contract requirements for a solicitation which may be bid out in the future. IFBs, RFPs, LIQs, and RFIs are publicly advertised in a newspaper of general circulation as well as posted and downloadable from Pace's website.

Whenever bids or proposals are being sought for purchase contracts, a due date for the submission of bids or proposals, and the location and time for the bid opening or proposal deadline will be advertised. Only bids or proposals which are received by the advertised due date and time will be considered by Pace.

Pace's specifications will state the type of contract that will be awarded.

FTA Circular 4220.1F (as amended) requires a fair and reasonable price determination in connection with every procurement action. Formal procurements require more thorough documentation detailing fair and reasonable pricing and how the determination was derived.

The following outlines the general requirements of Pace Procurements that exceed \$40,000 in value:

A. Method of Procurement Documentation

Purchasing staff shall determine the appropriate method of solicitation for all formal procurements. The Method of Procurement Matrix Form shall be completed to document this process. For detailed procedures on documentation of selection of the appropriate method of solicitation, see Purchasing Department Roles and Responsibilities – Operating Manual.

B. Written Procurement Selection Procedures

Pace's solicitation selection procedures shall:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the

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material, product, or service to be procured when necessary, shall set forth those minimum essential (salient) characteristics and standards to which it must conform if it is to satisfy its intended use.

2. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of the item or services to be procured. The specific features of the named brand which must be met by offerors shall be clearly stated.
3. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

C. Geographic Restrictions

Pace will not use geographic preferences in the award of contracts except in the case of procurement of A&E services, where knowledge of local conditions and building codes is a relevant factor in the quality of the A&E services. However, Pace will maintain a competitive environment for local A&E preferences.

D. Prequalification of Vendors

Pace does not maintain a list of “prequalified” firms that are used in acquiring goods and services.

E. Options

Option items/years may be included in contracts entered into by Pace. An option is a unilateral right in a contract by which, for a specified time, Pace may elect to purchase additional equipment, supplies, or services called for in the contract, or may elect to extend the term of the contract. If Pace chooses to use options, the requirements below apply:

1. Evaluation of Options

If required in the solicitation, the option quantities or periods contained in the contractor’s bid or offer should be evaluated if it is Pace’s intention to award that option. When options have not been evaluated as part of the original award, the exercise of such options shall be considered a sole source procurement.

- i. Evaluation Required - In general, Pace will evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends

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to exercise those options after the contract is awarded

- ii. Evaluation Not Required - Pace need not evaluate bids or offers for any option quantities when Pace determines that evaluation would not be in its best interests. An example of a circumstance that may support a determination not to evaluate bids or offers for option quantities is when Pace is reasonably certain that funds will not be available to permit it to exercise the option

2. Exercise of Options

Pace must ensure that the exercise of an option is in accordance with the terms and conditions of the option provisions stated in the initial contract awarded.

An option may not be exercised unless Pace has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised. Accordingly, Buyers must conduct a market analysis at the time the option is being exercised.

F. Tag-Ons

Pace will not participate in the use of tag-ons. A “tag-on” is defined as the addition of work (supplies, equipment, or services) that is beyond the scope of the original contract that amounts to a cardinal change. “In-scope” changes are not considered tag-ons. See *PC-16, Sole Source and Non-Competitive Procurements* for further details on policies pertaining to change orders or contract modifications and cardinal and in-scope changes.

G. Responsiveness

For any procurement that is awarded, Pace shall document the responsiveness of each bid received and shall fully detail why a bid was deemed non-responsive. For detailed procedures in determining and documentation of responsiveness, see Purchasing Department Roles and Responsibilities – Operating Manual.

H. Award to Other Than the Lowest Bidder or Offeror

Federal law authorizes Pace to award a contract other than the lowest bidder if that award furthers an objective consistent with the purpose of Title 49 of the United States Code, which includes improved long term operating efficiency and lower long term costs. Additionally, an award of a contract other than the lowest bidder is permitted

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when stated in the evaluation factors of the solicitation. Pace will include a statement in its solicitation document reserving the right to award the contract to other than low bidder or offeror.

I. Awards to Responsible Contractors

If federal assistance supports the procurement, an award may be made only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is a procurement issue that is determined by Pace under the standards of Title 49 of the United States Code by an affirmative demonstration of the prospective contractor and any proposed subcontractors.

Therefore, Pace will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Pace shall not award contracts to vendors who are on the List of Parties Excluded from Federal Procurement or Non-procurement contracts. This list can be accessed by going to www.sam.gov. Further, Pace shall not award contracts to vendors who are debarred by State or local government agencies.

The determination of responsibility will be documented in the contract file. For detailed procedures in determining and documentation of responsibility, see *Purchasing Department Roles and Responsibilities – Operating Manual*.

J. Rejection of Bids and Proposals

Pace reserves the right to reject any and all bids submitted in response to an invitation for bids or request for proposals.

K. Solicitation Mailing List

In addition to the general requirement for full and open competition the agency maintains an informal bidders list of eligible and qualified vendors who have expressed an interest in receiving notification of solicitations. The bidders list contains the names, addresses and points of contact for entities that will receive notification of the solicitation. Further, all competitive procurement opportunities/solicitations over \$40,000 are posted online and are downloadable from Pace’s website; Pace does not preclude any vendor from submitting a bid or proposal in response to these procurement opportunities/solicitations unless a conflict of interest issue exists as

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defined in The Common Grant Rules,³ Chapter VI, paragraph 2.a (4) (h) and FTA Circular 4220.1F (as amended), if applicable.

L. Pre-Bid and Pre-Proposal Conferences

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements or when a DBE goal has been assigned. The conference is chaired by the responsible Purchasing Department staff member and is an open forum where potential respondents may address ambiguities in the solicitation documents. Notice of the conference is included in the solicitation at the time of issuance. Attendance at pre-bid and pre-proposal meetings are not mandatory and all questions and clarifications to the solicitation documents or process must be made available to all potential bidders and offerors through a written addendum issued by the responsible buyer.

M. Contract Provisions

All contracts that exceed \$40,000 shall include provisions to define a sound and complete agreement. All contracts that exceed \$40,000 shall include all applicable FTA and State of Illinois clauses as outlined in Appendix A. Appendix A also outlines additional required clauses for contracts that exceed \$100,000. In addition, contracts and subcontracts shall contain contractual provisions that allow for:

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
2. Termination for cause and for convenience by including the manner by which it will be affected and the basis for settlement.

N. Liquidated Damages Provisions

It is Pace's policy to include "liquidated damages" provisions in contracts where it may reasonably expect to suffer damages through delayed contract completion and to the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per business day for each business day of overrun in contract time; and the rate must be specified in the contract.

³ "Common Grants Rules" refers to DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which for Pace's purposes apply to Federal grants and cooperative agreements with governmental recipients of Federal assistance including Indian tribal governments.

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O. Progress Payments

In some circumstances, Pace may enter into contracts that require the use of progress payments. Progress payments shall only be made to the contractor for costs incurred in the performance of the contract. In addition, the agency must obtain title to the property (materials, work in progress, finished goods) for which the progress payments are made. The agency does not make advance payments to a contractor prior to the incurrence of costs by the contractor.

P. Purchasing Department Files

The Purchasing Department shall maintain a Procurement History file which provides an audit trail from the initiation of a purchasing requirement through contract award and contract management. Where appropriate, the files will include, but not be limited to, documentation such as, the requisition, independent cost estimate, list of sources solicited, specifications/scope of work, original solicitation, addenda, proposals, bid evaluation results, responsiveness determination, responsibility determination, fair and reasonable price determination, contract or purchase order, change orders, Board Recommendations, copies of public notices, initial insurance documents, evidence of original performance/payment or other bond documents, notice of award, notice to proceed and all other related correspondence.

Q. Cost and Price Analysis

Pace shall perform and document some form of cost or price analysis for every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement. For formal procurements, more documentation is required. The intent of performing a cost or price analysis is to ensure Pace receives a fair and equitable price consistent with the required quality, delivery, and overall terms of the transaction. At a minimum, Pace's Requesting Department shall develop independent cost estimates (ICEs) for each procurement action before Pace receives bids or proposals. This cost estimate should be attached to the requisition to avoid delays in processing. A thorough cost analysis is also required when adequate price competition is lacking and for sole source procurements.

1. Cost Analysis

Pace must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. Pace shall perform a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). Pace will also

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obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. Pace, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product or service sold in substantial quantities to the general public or based on prices set by law or regulation.

- i. Federal Cost Principles - Federal cost principles contain many requirements about the allowability and allocability of costs. Pace will adhere to these principles when federal funds are utilized in third party contracts. Costs or prices based on estimated costs for contracts will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent and comply with applicable Federal cost principles.
- ii. Establishing Indirect Cost Rates - For contracts other than A&E contracts, if the third party contractor or subcontractor does not have an approved Government indirect cost rate agreement, the contract's dollar value should determine how that rate is verified.
 - Contracts of \$5 Million or Less - FTA will accept the audit recommendations of the contractor's certified public accountant, or indirect cost information in the contractor's annual statement to their stockholders, shareholders, or owners, or examples of acceptance of their rates by other governmental agencies within the last six months.
 - Contracts Exceeding \$5 Million - If the contract exceeds \$5 million, then the Defense Contract Audit Agency, another Federal cognizant audit agency, or an accounting firm approved by the Federal Government to perform audits for the Federal Government, must verify the contractor's or subcontractor's rates.
- iii. Profit – Pace will negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which Pace performs or acquires a cost analysis. To establish a fair and reasonable profit, Pace needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

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2. Price Analysis

If Pace determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. One method to record this price analysis is through the use of a Price Analysis Form on which Purchasing personnel can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

R. Contract Administration/Post-Award Activities

Pace shall ensure federal and state funds are expended in a responsible manner through its contract administration activities. Contract administration, those activities performed after a contract has been awarded, ensures that the contractor's performance meets all requirements set forth in the contract. The day to day contract administration and monitoring of the contractor's performance, in terms of technical and contractual issues, shall be the responsibility of the Project Manager/Requesting Department. Likewise, approval of invoices and payment are the responsibility of the Project Manager/Requesting Department. If there are issues with performance in terms of technical or contractual compliance, the Purchasing Department shall be notified immediately to evaluate Pace's rights and responsibilities in terms of contract breach. For serious contractual issues requiring legal input, the Purchasing Department shall contact the Legal Department immediately.

Contracts involving the expenditure of public funds are subject to review and audits by funding agencies. As contract administration is a primary function of the Requesting Department, a central file for post-award contract activities with all written documentation produced during the life of the contract shall be kept in the Requesting Department files. The post-award file contents shall include, at a minimum, the executed contract and notice of award/notice to proceed if applicable; bond-related documentation; contract-required insurance documentation; post-award correspondence concerning the contract; documentation of submittals by the contractor and corresponding approvals by Pace; all documentation relating to changes to the contract, claims, disputes and final close-out of the contract.

Post award, verification of invoiced costs and contractor adherence to budgets and schedules shall be the responsibility of the Project Manager/Requesting Department. The review of invoiced costs includes determining that good/services invoiced conform to the scope and pricing outlined in the contract, verifying adherence to

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freight terms designated in the contract and confirming that sales tax has been exempted where applicable. The Project Manager/Requesting Department is responsible for addressing issues related to invoiced costs and for obtaining revised billing when necessary. Additionally, ensuring the contractor submits insurance certificates, bonding documentation, and all other contractually required documentation shall be the responsibility of the Project Manager/Requesting Department. Final contract closeout activities will be administered by the Project Manager/Requesting Department and other involved parties and shall include those items listed on the "Contract Closeout Checklist" prior to issuance of final payment to the contractor.

The Purchasing Department's general role in Pace's contract administration activities is to coordinate all involved parties so that change order approvals, contract modifications, and exercise of options are handled in accordance with Pace procedures and in accordance with federal guidelines regarding documentation requirements. A price or cost analysis for change orders and a market analysis for options are also the Purchasing Department's responsibility. However, the Project Manager or Requesting Department is responsible for submitting the Independent Cost Estimate and assisting in analyzing current market information in order for the Purchasing Department to conduct an adequate cost, price, or market analysis.

III. SOLICITATION AND SELECTION METHODS

A. Sealed Bids/Invitation for Bids (IFB)

The IFB is a formal competitive procurement process that is used for the purchase of goods and services that may exceed \$40,000.

The IFB method of procurement is employed when all of the following apply:

1. A complete, adequate and realistic specification or purchase description is available.
2. Two or more responsible suppliers are willing and able to compete effectively for the contract.
3. The procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can be made on the basis of price.
4. No discussion with bidders is needed after receipt of offers.
5. Award is made to the lowest, responsible and responsive bidder.

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For more detail on Pace's policies pertaining to the IFB process, please see *PC-04, Technical Specifications*.

B. Best Value or Request for Proposals (RFP)

Best Value or Request for Proposals is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical merit and price.

For more detail on the policies pertaining to the RFP Process, see PC-06, Professional Services Contracts.

C. Two Step Procurements

Pace shall utilize two-step procurement procedures for technology related (and other applicable types of) procurements.

Pace typically allows the use of two-step procurement procedures in Best Value procurements (RFPs), provided the opportunity for full and open competition is retained. The following describes the two-step procurement process:

1. Review of Technical Qualifications and Approach

The first step is a review of the prospective contractors' technical approach to Pace's request and technical qualifications to carry out that approach. Pace then may narrow the competitive range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications. Pricing in terms of fixed hourly rates is typically also submitted and evaluated at this stage and are fixed for the term of their contract.

2. Review Proposals Submitted by Qualified Prospective Contractors

The second step consists of soliciting and reviewing complete proposals, including price, submitted by each prospective contractor determined to be qualified in the previous step. Absent exceptional circumstances, Pace should attempt to solicit proposals from at least three qualified prospective contractors.

Unlike qualifications-based procurement procedures required for A&E

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services, Pace shall consider all proposal prices submitted as well as other technical factors, rather than limiting reviews to the most qualified bidder or offeror.

D. Letters of Interest and Qualifications (LIQs) or Qualifications-Based Procurements

Special procedures, in the form of Letters of Interest and Qualifications, will be used for competitive negotiation procedures for the procurement of qualifications-based Architectural and Engineering (A&E) services in accordance with the Brooks Act. Related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services requiring the services of a registered or licensed engineer shall also be procured using the process set forth in this subsection and as elaborated in *PC-15, Architectural and Engineering Services Contracts*.

Only the Capital Financing and Infrastructure Department shall submit requisitions for and/or oversee the administration of A&E contracts that lead directly to a construction project as defined by the FTA.

Following this method, competitors' qualifications are evaluated and the most qualified competitor is selected subject to the successful negotiation of fair and reasonable compensation. Under this method, Pace may not include pricing as an evaluation factor in determining the most qualified Offeror. The major difference with A&E procurements is that pricing is not a factor of the committee's evaluation of the proposal submittals. Negotiations are conducted with the most qualified Offeror. If negotiations with the most qualified Offeror cannot be successfully completed, negotiations are then initiated with the next best qualified Offeror. This method of procurement is used only for the procurement of A&E related services which require licensed engineers and other related disciplines. The nature of the firm performing the services does not determine whether it will be selected through the use of qualifications-based procurement procedures. For example, if a well-known A&E firm offers to provide mapping services not related to construction, alteration, or repair of real property, Pace may not use qualifications-based procurement procedures to evaluate that contractor's offer. In contrast, if a firm that does not generally provide A&E services offers to provide mapping services that are directly in support of, directly connected to, or directly related to or lead to construction, alteration, or repair of real property, Pace must evaluate that offer using qualifications-based procurement procedures.

For Design-Build procurements, the preponderance of the cost shall be for A&E services to qualify for a qualifications-based procurement method (see Section IV, E below). In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management,

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construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, Pace shall use qualifications-based procurement procedures based on the Brooks Act. However, typically the construction costs of a design-build project are usually predominant so that Pace would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based Brooks Act procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, Pace may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.

E. Non-Competitive (Sole Source) Procurement

Procurement by non-competitive proposals (sole source) may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

1. Item is only available from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from the competitive solicitation process.
3. FTA authorizes non-competitive negotiations.
4. After solicitation of a number of sources, competition is determined inadequate only when one of the above circumstances applies, shall sole source or non-competitive procurement methods be used.

For all procurements that exceed \$40,000 and where competition was not adequate, a Cost and Price Analysis must be completed, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required. Pace, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product or service sold in substantial quantities to the general public or based on prices set by law or regulation.

At a minimum, if a cost analysis cannot be performed, Pace will compare vendor's pricing with the independent cost estimate data submitted by the Requesting Department and other pricing data, and ensure that the profit and G&A rates, if available, are acceptable. The cost and price analysis and documentation of the sole source justification shall be included in the Procurement/Contract file.

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F. Single Bid or Proposal

Upon receiving a single bid or proposal in response to a solicitation, Pace should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and should include a survey of potential sources that chose not to submit a bid or proposal.

1. Adequate Competition

Per FTA Circular 4220.1F (as amended), competition is to be determined adequate when the reasons for few responses were caused by conditions beyond Pace's control. Many unrelated factors beyond Pace's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid sole source. Even if competition was determined to be adequate, we must process the single bid as a sole source and similar processes required of the sole source procurement shall be followed.

2. Inadequate Competition

Per FTA Circular 4220.1F (as amended), competition is to be determined inadequate when, caused by conditions within Pace's control. For example, if the specifications used were within Pace's control and those specifications were unduly restrictive, competition will be inadequate. If competition is deemed inadequate based on Pace's actions, then we must re-solicit bids or proposals.

Purchasing staff shall document this process by completing a Single Source/Single Bid Analysis Form. For detailed procedures on procurements that resulted in single bids or single proposals, see *PC-16, Sole Source and Non-Competitive Procurements* and the *Purchasing Department Roles and Responsibilities – Operating Manual*.

G. Intergovernmental, Joint Procurement, and Cooperative Purchasing or Schedule Agreements

To foster greater economy and efficiency, Pace may enter into State and local intergovernmental or interagency agreements for procurement or use of common goods and services. Pace may also plan procurements in advance with other governmental users, and competitively award contracts in which several governmental entities may draw upon to meet their needs. This approach creates economies of scale,

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reduces procurement lead times and reduces administrative effort and expense. The requirements and standards of this manual apply to these agreements.

Buyers shall confirm that the items or services are covered under the joint or cooperative purchasing programs by checking each programs subsequent websites for listings of available contracts or other sources of information. Additionally, Buyers shall conduct a cost or price analysis to determine whether the price is fair and reasonable. Further, all required FTA and State of Illinois clauses shall be incorporated by issuing an addendum to the joint/cooperative purchasing contract. Caution must be applied to ensure that the technical changes to the cooperative agreement are not so substantial that Pace cannot use the pricing in the existing contract.

These procedures do not apply for Intergovernmental Agreements, in which no federal funds are utilized, and which are executed between Pace and other governmental entities for services and financial arrangements and that are handled outside of the Purchasing Department/Purchasing process.

H. Piggyback Contracts

Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the contract award was through the use of an indefinite-delivery-indefinite quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract.

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

Pace's later needs might decrease due to changed circumstances or honest mistakes. In those situations, Pace may assign its unneeded contract authority to another entity that would like to acquire the property or services.

As with other types of procurements, Purchasing staff shall conduct a cost or price analysis for contracts utilizing an assignability clause and determine whether the price is fair and reasonable. Additionally, all required FTA and State of Illinois clauses shall be incorporated by issuing an addendum to the master purchasing contract that contains the assignment language.

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IV. ADDITIONAL REQUIREMENTS FOR SPECIFIC CONTRACT TYPES

A. Requirements for Revenue Contracts

Pace will utilize competitive selection procedures and principles in the award of revenue generating contracts. The extent of and type of competition required is within the discretionary judgment of Pace.

B. Requirements for Rolling Stock

Pace shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options in accordance with FTA Circular 4220.1F (as amended) or most recent version. Additionally, all rolling stock shall be procured by sealed bid (Invitation for Bids process) unless it is determined by 2/3 of the then Pace Board of Directors that a negotiated procurement (a Request for Proposal process) offers advantages in terms of the cost or financing of the equipment, its delivery, or other allowable advantage, as required by *Pace's Ordinance SBD 15-21, Regulations Governing Public Bidding*.

C. Buy America Requirements

Buy America Requirements apply to all contracts that exceed \$100,000. Therefore, Pace shall comply with Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661, which impose Buy America Provisions on the procurement of foreign products and materials. Pace shall ensure that Federal Buy America requirements are observed.

D. Construction and Public Works Contract Requirements

There are various specific requirements set forth in FTA Circular 4220.1 F (as amended) for Construction procurements.

Contracts for the construction, reconstruction or improvement of any facility when the expenditure exceeds the small purchase procedures threshold may be awarded using either sealed bids or competitive negotiations as authorized by Pace policy. Construction contracts shall not be awarded using non-competitive procedures except in special circumstances where the requirements set out in FTA Circular 4220.1F (as amended) are met.

Where applicable, Requesting Departments shall ensure that references in specifications conform to widely recognized standards for specifications promulgated by governments, industries, and technical societies.

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When "brand name or equal" descriptions are necessary, specifications shall clearly identify and describe the particular physical, functional, or other characteristics of the brand name items that are considered essential to satisfying the requirement.

An Independent Cost Estimate (ICE) of construction costs shall be prepared for each proposed contract and for each proposed contract modification or change order. The estimate shall be prepared by the Requesting Department or by a contract consultant under the direction of the Requesting Department.

Additionally, contracts for construction and related contracts shall be awarded in accordance with the labor provisions of this Subsection and applicable labor provisions of FTA Circular 4220.1F (as amended). Further, all public works contracts, regardless of dollar value, must adhere to the Illinois Prevailing Wage Act.

1. Federal Construction Labor Standards

All construction contracts greater than \$100,000 and, in very limited circumstances, non-construction projects greater than \$100,000 that employ laborers or mechanics on public work shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). This Act and DOL regulations cover 1) overtime requirements, 2) violations; liability for unpaid wages; liquidated damages, 3) withholding for unpaid wages and liquidated damages and 4) incorporation of these requirements in Subcontracts.

All Pace construction contracts in excess of \$2,000 shall include a provision requiring the contractor to comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate no less than the minimum wages specified in a wage determination issued by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. Further information on Davis-Bacon regulations can be found at www.dol.gov/dol/compliance.

Additionally, all Pace construction contracts in excess of \$2,000 for construction or repair shall include a provision requiring the contractor to comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing by any means any persons employed in the performance of the work

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under the contract or subcontract to give up any part of the compensation to which he is otherwise entitled. Weekly certified payrolls shall be submitted by the Contractor and the requesting department/project manager shall maintain this in their files for public inspection by the Department of Labor at any time.

2. Illinois Prevailing Wage Act

In accordance with the State of Illinois' Prevailing Wage Act, all public works contracts, regardless of dollar amount, must adhere to state prevailing wage determinations. This Act applies to the wages of laborers, mechanics and other workers employed in any public works, as stated in the Illinois Prevailing Wage Act (820 ILCS 130), by any public body and to anyone under contract for public works. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. Public works is defined as all fixed construction work performed by or on behalf of any public body, paid in whole or in part with public funds.

Only such laborers, workers and mechanics as are directly employed by contractors or subcontractors in actual construction work on the site of the building or construction job, and laborers, workers and mechanics engaged in the transportation of materials and equipment to or from the site, but not including the transportation by the sellers and suppliers or the manufacturer or processing of materials or equipment, in the execution of any contract or contracts for public works with any public body shall be deemed to be employed upon public works. The wage for a tradesman performing maintenance is equivalent to that of a tradesman engaged in construction or demolition.

State prevailing wage determinations may be accessed at:

<http://www.state.il.us/agency/idol/rates/rates.HTM>

3. Bonding

The Common Grant Rules require bonds for all construction contracts exceeding the federal simplified acquisition threshold (\$100,000) unless FTA determines that other arrangements adequately protect the Federal interest. Therefore, as required by the FTA, Pace shall require the following:

- i. Bid Guarantee - Pace will require each bidder to provide a bid guarantee equivalent to five (5) percent of its bid price. The "bid

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guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

- ii. Performance Bond - Pace will require third party contractors to obtain a performance bond for 100 percent of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third party contract.
- iii. Payment Bond - Pace will require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all subcontractors supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
 - Less Than \$1 Million: Fifty percent of the contract price if the contract price is not more than \$1 million.
 - More Than \$1 Million but Less Than \$5 Million: Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million.
 - More Than \$5 Million: Two and one half million dollars if the contract price is more than \$5 million.
- iv. Reduced Bonding - For any project not funded by capital grants, Pace will accept a local bonding policy that conforms to the minimums described in this subparagraph. Pace reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects Pace’s interest.
- v. Excessive Bonding - Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if Pace has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure at the time of partially completed work. Nevertheless, if Pace’s “excessive bonding”

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requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements.

More detailed information and policies pertaining to Construction field changes will be found in *PC-02-D, Field Changes*.

E. Architectural and Engineering (A&E) Service Contract Requirements

Federal laws and regulations impose the following requirements on A&E and related service procurements:

1. Qualifications-Based Procurement Procedures Required

For projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (Brooks Act procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

As noted in the FTA's Best Practices Procurement Manual, the Independent Cost Estimate (ICE) is critical in the award of an A&E contract, as price is not a deciding factor in the award decision. Therefore, the ICE is critical in conducting a thorough cost and price analysis to determine whether pricing is fair and reasonable.

2. Qualifications-Based Procurement Procedures Prohibited

Unless FTA determines otherwise in writing, Pace may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Even if a contractor has performed services listed herein in support of a construction, alteration, or repair project involving real property, selection of that contractor to perform similar services not relating to construction may not be made through the use of qualifications-based procurement procedures.

A project involving construction does not always require that qualifications-based procurement procedures be used. Whether or not qualifications-based procurement procedures may be used depends on the actual services to be

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performed in connection with the construction project.

3. Relation to Construction

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

As set forth in Section 9.e of the FTA's Best Practices Procurement Manual, Pace shall use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. § 1102 and 49 U.S.C. § 5325(b). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

i. Design-Build – One Step Process

Pace may undertake its design-build procurement in a single step. Pace must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section 9.e of the FTA's Best Practices Procurement Manual **when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) related services.**

Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in Section 9.e of the FTA's Best Practices Procurement Manual.

ii. Design-Build – Two Step Process

Another procurement method Pace may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m.

This method consists of:

- Review of Technical Qualifications and Approach

The first step is a review of the prospective contractors' technical qualifications and technical approach to the project.

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Pace may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.

- Review of Complete Proposals

The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.

By using this two-step method, it will not be necessary for Pace to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to Pace.

iii. Design-Bid-Build

The design-bid-build procurement method requires separate contracts for design services and for construction.

For design services, Pace must use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law and regulations.

Because Pace may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, Pace generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate

F. Typical Contract Types

Typical Contract types that Pace utilizes, but are not limited to, are outlined below:

1. Firm Fixed Price

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

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2. Cost Reimbursement

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

3. Indefinite Delivery Type Contracts

There are three different types of Indefinite Delivery contracts:

i. Definite-quantity contracts

A definite-quantity contract is one which provides for delivery of a definite quantity of specific supplies or services during a time period which is fixed, with deliveries or performance to be scheduled at designated locations at the time each order is placed under the contract. This type of contract is appropriate when Pace knows in advance how many total items it will need during the contract period but is uncertain as to the exact time or the exact amount of its needed deliveries to any given location. The supplies or services called for by this type of contract must be regularly available from the supplier or available after a short lead time.

ii. Requirements Contracts

A requirements contract is one in which Pace commits to place all of its requirements for a particular item or service with a particular contractor during a specified contract period, with deliveries or performance to be scheduled at the time each order is placed under the contract. This type of contract is used when quantities and/or the times of needed deliveries are uncertain.

When this type of contract is used, Pace should state a realistic estimated total quantity in the solicitation and in the resulting contract. This estimate is not a guarantee by Pace that it will buy the estimated quantity, but is a good faith estimate of what the requirements are likely to be. The estimate should be based on records of previous requirements as well as the most current information available.

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The contract should protect the contractor by stating a maximum limit of the contractor's obligation to deliver. This maximum limit may be expressed for the entire contract, as well as for each individual order and for any particular period of time within the contract period of performance. Minimum order amounts may also be expressed for each order placed and for the contract as a whole. Minimum order amounts, however, are not required for this type of contract. It should be noted that the minimum and maximum quantities in a *requirements contract* are for the contractor's protection and do not necessarily limit Pace's procurement authority to order more units.

iii. Indefinite Quantity (IQ) Contracts (Commodities)/Task Order Contracts (Services)

This is a type of contract that provides for an indefinite quantity of supplies or services during a fixed period of time. Indefinite Delivery Indefinite Quantity (IDIQ) contracts are most often used for service contracts and Architectural-Engineering (A-E) services. Awards are usually for base years as well as option years.

For IDIQ contracts, Pace would place delivery orders (for supplies) or task orders (for services) against a basic contract for individual requirements. Minimum and maximum quantity limits should be specified in the basic contract as either number of units (for supplies) or as dollar values (for services). Pace will use an IDIQ contract when it cannot predetermine, above a specified minimum, the precise quantities of supplies or services that Pace will require during the contract period.

For federally funded procurements, to ensure that the contract is binding, a minimum number of units must be stated in the contract, and it must be more than a nominal quantity. Additionally, for federally funded contracts, there must also be a stated maximum of units that may be ordered. Indefinite-quantity contracts should never be "open ended," where no maximum quantity is stated.

For detailed procedures, including FTA guidance and restrictions pertaining to the use of Indefinite Delivery contracts for federally funded contracts, please refer to the *FTA's Best Practices Procurement Manual* and *Purchasing Department Roles and Responsibilities – Operating Manual*.

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G. Prohibited or Restricted Contract Types

The following contract types are prohibited or restricted:

1. Cost Plus Percentage of Cost and Cost Plus a Percentage of Construction Cost Prohibited

Pace shall not procure goods or services utilizing a “Cost Plus Percentage of Cost” or “Cost Plus a Percentage of Construction Cost” method. This method is strictly prohibited. This method and the prohibition against it is fully described in FTA Circular 4220.1F (as amended).

2. Time and Material Contracts Restricted

The FTA only **permits** the use of time and material contracts only:

- i. After determining that no other contract type is suitable; and
- ii. If the contract specifies a ceiling price that the contractor may not exceed except at its own risk

Therefore, Pace will only award time and material type contracts if both of the above conditions exist.

V. CHANGE ORDERS

- A. A Change Order modifies the terms and conditions of an existing purchase order contract (i.e. standard purchase order or blanket purchase agreement). A Change Order must be issued to the Contractor in writing and signed by the Department Manager of Purchasing or the Executive Director in accordance with FI-02.
- B. Consistent with FTA Circular 4220.1F (as amended), Cardinal Change Orders are strictly prohibited. Cardinal Changes are defined as those changes or modifications that are not within the scope of the original contract.

The Purchasing Department is responsible for reviewing the requested change(s) for compliance with Federal Transit Administration (FTA) Procurement Rules and internal Pace policies and if appropriate, modifying the previously approved purchase order contract in accordance with the change(s) requested.

Purchasing is prohibited from authorizing any Change Order with a financial impact above the original contract amount or that extends the time of completion by 30 days or more, unless the request is accompanied by a written explanation indicating that the

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circumstances requiring the change in performance:

1. were not reasonably foreseeable at the time the contract was signed.
2. were not within the contemplation of the contract as signed.
3. are in the best interest of Pace as authorized by law.
4. the price change is fair and reasonable.

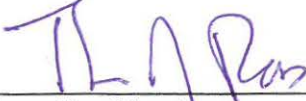
The Purchasing Department is responsible for negotiating the Change Order with the Contractor.

In limited situations when timing of work is critical in a construction or construction related project, the Department Manager, Purchasing may delegate partial field change authority to the Department Manager, Capital Financing and Infrastructure or the Section Manager, Field Construction, Capital Financing and Infrastructure or other responsible Pace staff who will act as the Purchasing Manager's Technical Representative (PMTR). See *PC-02-D, Field Changes* for detailed procedures pertaining to Construction field changes.

VI. VENDOR PERFORMANCE AND CONTRACT ADMINISTRATION

Purchasing buyers are required to monitor and maintain on record, information regarding the performance of vendors. Day to day contract administration is the requesting or using department's responsibility. Therefore, it is key that the requesting or using department's project manager or contract administrator manage and document vendor performance issues and alert Purchasing staff immediately if there are issues with vendor performance or contract compliance. Purchasing staff shall contact the Legal Department immediately if there are serious contractual issues that require Legal counsel.

The requesting or using departments are responsible for monitoring compliance with contract terms and conditions, tracking quality exceptions, and in a timely manner, communicating to the assigned buyer in Purchasing any compliance and performance issues. The assigned buyer may request this information in writing.



Executive Director

4/13/15

Date

Federally Required and Other Model Clauses Applicability Matrix - Formal Procurements (Sole Source Procurements, Joint Procurements, and Competitive and Qualifications Based Procurements)*

Source: FTA Best Practice Procurement Manual, Appendix A

No.		Dollar Threshold	Included in Templates?
			Formal All Templates
1	Fly America Requirements	>\$3,000.00	Y
2	Buy America Requirements	> \$100,000.00	Y
3	Charter Bus and School Bus Requirements	>\$3,000.00	Y
4	Cargo Preference Requirements	>\$3,000.00	Y
5	Seismic Safety Requirements	>\$3,000.00	Y
6	Energy Conservation Requirements	>\$3,000.00	Y
7	Clean Water Requirements	> \$100,000.00	Y
8	Bus Testing**	>\$3,000.00	
9	Pre Award and Post Delivery Audit Requirements	>\$3,000.00	
10	Lobbying	> \$100,000.00	Y
11	Access to Records and Reports	>\$3,000.00	Y
12	Federal Changes	>\$3,000.00	Y
13	Bonding Requirements	> \$100,000.00	
14	Clean Air	> \$100,000.00	Y
15	Recycled Products	>\$10,000.00 (annual)	
16	Davis Bacon and Copeland Anti Kickback Acts	> \$2,000.00	Y
17	Contact Work Hours and Safety Standards Act	> \$100,000.00	Y
18	(Blank)	N/A	N/A
19	No Government Obligation to Third Parties	>\$3,000.00	Y
20	Program Fraud and False or Fraudulent Statements and Related Acts	>\$3,000.00	Y
21	Termination***	> \$10,000.00***	Y
22	Government-wide Debarment and Suspension***	>\$25,000***	Y
23	Privacy Act	>\$3,000.00	Y
24	Civil Rights Requirements	>\$3,000.00	Y
25	Breaches and Dispute Resolution	> \$100,000.00	Y
26	Patent and Rights in Data	>\$3,000.00	Y
27	Transit Employee Protective Agreements	>\$3,000.00	Y
28	Disadvantaged Business Enterprises (DBE)	>\$3,000.00	Y
29	(Blank)	N/A	N/A
30	Incorporation of FTA Terms	> \$3,000.00	Y
31	Drug and Alcohol Testing	> \$3,000.00	Y

*State of IL also requires State FOIA and IL Prevailing Wage Act language

**Bus testing clauses and requirements are needed for all rolling stock contracts; the buyer and the end user incorporate these requirements in specific exhibits for these types of contracts.

***Pace policy or State of Illinois regulations on these clauses are more stringent than the FTA and are included in all contracts regardless of value.