



**United States Department of Transportation  
Federal Transportation Administration  
Arkansas State Highway and Transportation Department**

***Purchasing and Procurement Policy and Procedure Manual***

***of the City of Jonesboro, Arkansas***

***Jonesboro Economical Transportation System***

**THIS IS A DRAFT**

**JET  
SYSTEM**

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## ***I. PURPOSE AND INTRODUCTION***

**1.0** ***Objectives*** - As a recipient of federal funds, the Jonesboro Economical Transit System (from this point on known as JETS) has the responsibility to use prudent procurement practices in its purchasing activities. The purpose of this procurement manual is to define the basic policies and procedures that govern the procurement, accounting, and disposal<sup>1</sup> of JETS facilities, rolling stock<sup>2</sup>, materials, and equipment. It also governs the procurement and accounting of professional services that may be required by JETS. This manual sets forth the guidelines and policies to be followed by ***all*** JETS personnel involved in the procurement process including members of the JETS Community Transportation Advisory Board and all other boards that fall under the JETS domain.

**2.0** ***General Procurement Policy*** – It is the policy of JETS that the purchase of all goods and services be handled through the City of Jonesboro’s Purchasing Department. The Purchasing Department’s mission is to support JETS management, staff, and employees in performing their mission by facilitating the procurement of quality, cost-effective equipment, products and services, in an efficient and responsive manner. Any person making procurements outside of this policy will bear the sole responsibility for justifying and documenting the procurement, including obtaining necessary approvals prior to submitting the documents to the Purchasing Department.<sup>3</sup>

The JETS has adopted the City of Jonesboro’s Minority Business Policy<sup>4</sup> in reference to the Disadvantaged Business Enterprise Plan (from this point known as DBE Plan). Effective implementation and vigorous enforcement of the DBE Plan has been established as a high priority by JETS Community

<sup>1</sup> Disposal is defined as the means to either sale, donate or trash any item in the JETS inventory that no longer serves a purpose or is functional.

<sup>2</sup> Circular 5000, Chapter II “Management of Real Property, Equipment and Supplies”. Any disposition of rolling stock before the end of its service life requires prior FTA approval. FTA is reimbursed its share of the proceeds from disposition. If revenue rolling stock is being removed from service before the end of its useful life, the return to FTA is the greater of the FTA share of the unamortized value of the remaining service life per unit, based on straight line depreciation of the original purchase price, or the Federal share of the sales price (even though the unamortized value is \$5,000 or less). [www.fta.dot.gov](http://www.fta.dot.gov)

<sup>3</sup> City of Jonesboro Purchasing Manual, 2006, ***STATE STATUE 19-4425; SEC 5 ACT 28 OF 1959; SEC 1, ACT 154 OF 1979; SEC 3 ACT 745 OF 1985***, “The Purchasing Department is the centralized purchasing system for the City of Jonesboro. It is under the authority of the Purchasing Department as designated by the Mayor of the City of Jonesboro to do so. No department or division head, supervisor, or city employee is authorized to purchase, make commitments to purchase, or indicate to any salesman or company a personal recommendation of their product. This does not preclude departments from furnishing information on supplies or products and making recommendations to the Purchasing Agent, the Mayor or Council Members.” pp. 3-4

<sup>4</sup> ***Minority Business Policy*** - It is the policy of the City of Jonesboro that minority business enterprises shall have the maximum opportunity to participate in the city purchasing process. Therefore, the City of Jonesboro encourages all minority businesses to compete for, win and receive contracts for goods, services, and construction. The city also encourages all companies to subcontract portions of any city contract to minority business enterprises.

Transportation Advisory Board. All JETS personnel, regardless of the size of the procurement, are encouraged to ensure that DBE's receive the maximum opportunity to compete for all goods and services procured by JETS.

The Purchasing Department of the City of Jonesboro is responsible for selecting qualified suppliers, but JETS also may suggest suppliers. It is noted that the Purchasing Department has a high level of authority to designate which suppliers will receive bids. A supplier's qualification evaluation, pre-bid conference, or mandatory inspection of the site may also be conducted if it is determined that the complexity or risks associated with the purchase warrant these extra steps.

All procurement steps will follow the Assurance of Cash Availability, Advertising for Bids and Invitation to Bid, Sealed Bid Openings, and the Awarding of the Bid.

If the Purchasing Department concludes, on the basis of all available evidence, that a particular bidder appears to be insufficiently responsible to ensure adequate performance, their bid may be rejected, even if it is the lowest bid submitted. The Purchasing Department also retains the right to reject bids when costs are higher than budgetary constraints, when bids do not meet specifications, or when it is the best interest of the City of Jonesboro and JETS.

This Procurement Manual contains information as to the DBE Plan to ensure the DBE Plan is properly implemented at each level of the procurement process. Additional information as to the DBE Plan can be obtained from the DBE Liaison for JETS. The DBE Liaison for JETS will be the Department Head of JETS.

JETS will abide by applicable federal, state, and local guidelines, which govern procurements. For procurements in which federal funds are used, federal regulations will take precedence, in many instances, over state and local guidelines. The Federal Transit Administration (from this point on known as FTA) provides guidance relating to procurement matters in FTA Circular 4220.1B, FTA Circular 5010.1C, and FTA Circular 4716.1A and 49 CFR Part 65.<sup>5</sup> Each of these Federal Circulars provides guidance for the procurement function of transit agencies. The Arkansas Highway and Transportation Department (from this point known as AHTD) and City of Jonesboro requirements must also be followed as appropriate, unless they contradict with Federal procurement law or the regulations are more stringent.

**3.0** **Change, Review, and Update** – This manual, or parts thereof, will only be changed with the approval of JETS Community Transportation Advisory Board, Public Services Committee, the FTA and adopted by the Jonesboro

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<sup>5</sup> [www.fta.dot.gov](http://www.fta.dot.gov)

City Council. Any Board member may request revision. Recommendations by staff for revisions shall be submitted to the Board for its consideration after request for approval has been reviewed by the Department Head. In all instances, only the JETS Board shall approve any and all changes to the Procurement Manual before being advanced to other governing bodies for approval.

This manual will be reviewed as changes in regulations and circumstances may arise which will require that the Purchasing Agent for the City of Jonesboro, with assistance from the Department Head, the Accounting Tech for JETS (who will oversee the FTA issued grants), and other Administrators of the City of Jonesboro review and/or comment on these changes and may take charge in the review of these requested changes. Any changes deemed necessary or appropriate will be submitted to the Department Head for review, with consultation from the Legal Counsel for the City of Jonesboro, if necessary, to prevent any regulation contradictions. Recommended changes will be forwarded to the Department Head of JETS to be submitted to the JETS Community Transportation Advisory Board for review and approval before being advanced to other governing bodies for approval.

The entire solicitation, bid and award process shall at all times comply with the City of Jonesboro, the FTA Third party Contracting Guidelines and the FTA Procurement Alerts which are periodically issued, amended and rescinded. Therefore, this manual is deemed automatically amended in accordance with the on-going issuance, amendment and rescission of the FTA Circulars and Alerts.<sup>6</sup> "At the same time, we have attempted to ease unnecessary requirements applied in our grantees' procurement processes while remaining consistent with applicable law and regulations, particularly the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 49 CFR Part 18 (the Common Grant Rule)."<sup>7</sup>

#### 4.0 *Ethics*

4.1 *Relationships* – In all procurement matters pertaining to JETS, no City of Jonesboro employee, Purchasing Agent, Service Contractor for the City of Jonesboro, JETS employee, City of Jonesboro Legal Counsel representing JETS, any member of any evaluation committee for a JETS funded project, any member or employee of the JETS Community Transportation Board or an immediate family member of

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<sup>6</sup>"Third Party Contracting Requirement—Fully Annotated Version" Number C 4220.1E. United States Department of Transportation, FTA, [www.fta.gov/legal/guidance/circulars/4220](http://www.fta.gov/legal/guidance/circulars/4220).

<sup>7</sup> FTA circulars set forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts. These requirements are based on the common grant rules, Federal statutes, Executive Orders and their implementing regulations, and FTA policy.

any of the above shall have any simultaneous relationship or engage in any activity while serving in such position or capacity which might:

- A. Involve or lead to personal or financial obligations that impair the objectivity or such person's judgment; or
- B. Give the appearance to others that favoritism or obligations exist between the Board or its members or employees, and any other party. (JETS Board Members are also subject to City of Jonesboro Code specifically defining Conflict of Interest Provisions as adopted by the Arkansas State in relation to officers and employees of the City of Jonesboro, including members of Boards and Commissions.<sup>8</sup>)

No JETS employee, City of Jonesboro employee, Purchasing Agent, Service Contractor for the City of Jonesboro, City of Jonesboro Legal Counsel, JETS Community Transportation Board member, officer or agent of JETS or any member of an evaluation committee for a JETS funded project, or an immediate family member of any of the above, may participate in the selection, award or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award:

- A. The JETS employee, City of Jonesboro employee, JETS Legal Counsel, JETS Board Member, or officer or agent of JETS or any member of any evaluation committee for a JETS funded project;
- B. Any member of his or her immediate family
- C. His or her partner; or
- D. An organization that employs, or is about to employ any of the above.

4.2 Gifts – No employee of the City of Jonesboro, JETS, Purchasing Department or Agent, Service Contractors for the City of Jonesboro, or member of the Community Transportation Board, Public Service Committee, any committee affiliates for the City of Jonesboro, or City Council, or an immediate family member of any of the above shall solicit or accept directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan or other thing of any value from any person or organization known to have or known to be seeking to establish a business relationship with JETS. All gifts or other gratuities from any party having or seeking to establish a business relationship with JETS are discouraged and are contrary to this declared policy.

<sup>8</sup>Jonesboro Purchasing Manual, Arkansas Statutes: 19-716 (e), p. 5



This policy is not intended to prohibit the ordinary and accepted courtesies of business, such as promotional desk calendars, diaries, cigarette lighters, pencils, and novelty items, but it is intended to prohibit receipt of valuable gifts and extended or expensive hospitality. Proper personal conduct requires that:

- A. Gifts or other gratuities which might adversely affect the exercise of Board member's or employee's judgment in matters pertaining to JETS, or tend to impair public confidence in JETS, must never be accepted.
- B. Entertainment in any form must not be accepted if either party might feel an obligation, or if a third party might infer that an obligation exists.
- C. If luncheon or dinner meetings occasionally are desirable for the conduction of business, JETS should pay their appropriate share of expenses of such meetings without any recourse.
- D. Board members, employees of the City of Jonesboro, JETS or Service Contractors for the City of Jonesboro, or an immediate family of any of the above shall neither solicit nor accept gratuities, discounts, favors, or anything of monetary value from contractors or potential contractors.

4.3 Influence - Because situations involving conflict of personal interest can also impair judgment:

No board member, agent, employee of the City of Jonesboro, Purchasing Agent, Service Contractors for the City of Jonesboro, employee of JETS, committee or City Council affiliates, or an immediate family member of any of the above shall have a financial interest in any other organization which might profit either from the decisions he/she makes in carrying out his/her JETS responsibilities, or from his/her knowledge of JETS actions or future plans while such individual is a board member or employee of the City of Jonesboro, JETS or a Service Contractor under contract with JETS or the City of Jonesboro. Any interest as an owner, partner, joint-venture, or stockholder of 1% or less in any such organization shall not be deemed as having a "financial interest" prohibited hereunder; but serving as Director, Officer, Consultant, employee or

having 1% or more invested in such organization shall be deemed as having a “financial interest”.<sup>9</sup>

- B. No board member, agent, employee of the City of Jonesboro, Purchasing Agent, Service Contractor for the City of Jonesboro, employee of JETS, or an immediate family member of any of the above shall make investments or act for personal gain based upon confidential knowledge he or she obtained—whether directly or indirectly—as a result of his or her position as an affiliate of JETS.<sup>10</sup>

**4.4** Guidelines of Purchasing in Service Contracts – To avoid conflict whether real or apparent, the following shall apply to employees of any organization, group, or affiliate of JETS in the process of purchasing or sending out to bid for a Service Contract.

- A. Neither the City of Jonesboro Purchasing Agent nor the support staff of the Purchasing Department shall make recommendations or be involved in preparation of specification for any contract for which any Service Contractor for the City of Jonesboro may bid or propose a bid for consideration.
- B. Neither the City of Jonesboro Purchasing Agent nor support staff of the Purchasing Department shall be involved in any aspect of evaluation, selection, or award of a contract for which that Service Contractor may bid, propose a bid, or make any protest associated with said procurement.

Neither the City of Jonesboro Purchasing Agent nor support staff of the Purchasing Department shall be involved in any aspect of contract administration of a contract or subcontract that has been awarded to the Service Contractor unless their non-involvement will interfere with the well-being of the City of Jonesboro or JETS.

- D. Neither the City of Jonesboro Purchasing Agent nor support staff of the Purchasing Department shall be involved in any aspect of any change of order of a contract or subcontract that has been awarded to the Service Contractor unless their non-

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<sup>9</sup> FTA Master’s Agreement for the Definition of *Personal Conflict of Interest* from Circular 4220.1E 2.4.2.2.2 Conflict of Interest located at [www.fta.dot.gov/legal/federal\\_register/2001/361\\_7235\\_ENG\\_HTML.htm](http://www.fta.dot.gov/legal/federal_register/2001/361_7235_ENG_HTML.htm).

<sup>10</sup> 40 CFR §18.36(c)(v) & §19.43 prohibit organizational conflicts of interest as restrictive of competition. 40 CFR §19.43 specifically prohibits contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals from competing for such work.

involvement will interfere with the well-being of the City of Jonesboro or JETS.

E. Neither the City of Jonesboro Purchasing Agent nor support staff of the Purchasing Department, no board member, agent, employee of the City of Jonesboro, committee nor City Council affiliates, Service Contractor for the City of Jonesboro, employee of JETS, or an immediate family member of any of the above, shall participate directly or indirectly in any procurement of petroleum products and materials and supplies in which they or their immediate family has investment.

F. The City of Jonesboro Purchasing Agent will not be permitted to bid/propose on a specific procurement for any reason due to the Conflict of Interest policy concerning bidding located in the Influence section 4.3(a) of Article I.

**4.5** Violations – Any direct violation of these procurement procedures by JETS Community Transportation Advisory Board, JETS employees, City of Jonesboro employee, Purchasing Agent or support staff, or Service Contractor for the City of Jonesboro and any other entities in regards to JETS outlined policies and procedures shall subject the individual or group to disciplinary actions by the Coordinator of JETS, Mayor and/or the City Council. Any violation by the Director will subject him/her to disciplinary action by the JETS Board which will forward their recommendations to the Mayor and/or the City Council. Violation or any attempt to circumvent these procurement procedures by contractors, bidders/proposers, or those potential contractors and bidders/proposers, or their agents shall be considered a breach of JETS procurement process, and shall be considered a willful breach if such violation is deemed to be in knowing or careless disregard of these procurement procedures, and shall subject the contractors and/or their agents to disciplinary action up to and including suspension or debarment from contracting with JETS.

It shall be the responsibility of each Community Transportation Advisory Board member, City of Jonesboro employee, JETS employee, Purchasing Agent and their support staff, and Service Contractor for the City of Jonesboro to familiarize themselves with the provisions of these procurement procedures. All inquiries concerning same should be directed to the Coordinator of JETS, the Purchasing Agent for the City of Jonesboro, or the Mayor. The Coordinator of JETS, the Purchasing Agent for the City of Jonesboro, and the Mayor will be notified of any violations or questionable action immediately.

JETS Board members are also subject to the City of Jonesboro Code which provides that violation thereof constitutes a misdemeanor. Penalties include discharge or removal.<sup>11</sup>

**5.0** *Vendor Relations* – JETS maintains an “open door” policy and makes every effort to maintain a good business relationship with all bidders and potential bidders with whom it does business. The Purchasing Agent and the support staff of the Purchasing Department assumes responsibility to:

- a. establish and maintain ethical purchasing policies and principles;
- b. maintain open and fair competition;
- c. maintain fair and objective purchase and bid specifications;
- d. observe and maintain honesty and candor in all transactions with suppliers;
- e. respect the confidence of suppliers in the handling of information;
- f. remain free from any obligation to suppliers;
- g. answer all inquiries promptly;
- h. decline to take advantage of vendor errors;
- i. see that all sales representatives receive full, fair and courteous hearing;
- j. furnish complete and accurate information;
- k. expedite delivery of material and promote prompt payment of invoices within the city's payment schedule of the 10<sup>th</sup> and 25<sup>th</sup> of each month;
- l. keep an open mind to new methods and procedures;
- m. encourage testing or demonstration of materials and products which may be of value to JETS; and
- n. visit with vendors and keep informed as to their methods and stability.

The Purchasing Department maintains an “open door” policy to all companies and citizens in the discussion of products and services. At various times, JETS may request assistance from vendors requiring the expenditure of time and effort on the part of the vendors. This in no way commits JETS to a purchase from a vendor serving in this way, nor does it obligate JETS to reimburse any expense incurred by the vendor in assisting JETS so long as JETS informs the vendor that such request shall create no obligation, reimbursement commitment, or otherwise. Furthermore, JETS never pays any expense for any bidder/proposer in the preparation or submission of any bid/proposal. *It is deemed a conflict of interest when any consultant or advisor in the preparation of a bid/proposal criterion submits to compete for that particular bid project.*

While it is true that the City of Jonesboro Purchasing Department maintains an open door policy to all companies and citizens in the discussion of products

<sup>11</sup> Jonesboro Purchasing Manual, *Arkansas Statutes: 19-716 (e)*, p. 5

or services, the open door policy closes somewhat during active procurement. Discussion with vendors remains open only as technical guidance and assistance. Information regarding any technical guidance during a pending procurement is provided to all vendors participating in a particular procurement.<sup>12</sup>

At all times the City of Jonesboro Purchasing Department operates with integrity and fairness to its suppliers. Through these principles, JETS intends to create an atmosphere which JETS, vendors, and citizens can work together for the provisions of goods and services to JETS at a fair and reasonable price.

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<sup>12</sup> In reference to this subsection, JETS staff should refer to the FTA Circular 4220.1 E which can be viewed at [www.fta.dot.gov](http://www.fta.dot.gov).

## II.      **POLICIES**

**1.0**      **General Policies** – The authority and responsibility for the purchase and sale of all personal property and services rests with the Purchasing Department of the City of Jonesboro subject to approval in some instances by the JETS Community Transportation Board. Occasionally, this authority may be delegated to the Coordinator of JETS, but only for a limited period and purpose and always subject to the Purchasing Department’s review and approval.

- A. Except as noted, all purchases for goods or services are initiated by a purchase requisition.
- B. JETS staff who request purchases may consult with vendors concerning details of their products; however, if a visit to the JETS location is required, the requestor will need to request such visits through the Purchasing Department in order to establish that they are not disbarred from participating in any federally funded procurements. Pricing and quantities should have the initial involvement of the Purchasing Agent in regards to necessary billing and payments except in instances that involve Section IV, paragraph 4.5
- C. All correspondence with suppliers of a contractual nature, or modification to the scope of work, is to be cleared through the Service Contractor for any project, Coordinator of JETS, members of the Board, Mayor and/or City Council. Any change orders to a contract shall require the approval of the Coordinator of JETS, members of the Board, Mayor and/or the City Council. Any modifications can be made to a contractual order as long as the Service Contractor for the project, the subcontractors (if any are involved), and other involved entities of JETS agree to the changes in writing. No other member can make any indications of these changes without authorization or approval. All announcements of these changes will flow through the Purchasing Department for the City of Jonesboro.
- D. As to all purchases of major supplies, services and/or construction, the Service Contractor for any project or his/her designee will conduct all negotiations with assistance from the initial Project Manager (which in most cases will be the Coordinator of JETS), the Purchasing Agent, and any City of Jonesboro departmental representatives deemed necessary for the involvement of the project. See Article VII- “Negotiations”, Section 1.0 (a).
- E. All contracts which meet the approval of the JETS Community Transportation Board shall be reviewed as to legal form by the Legal Counsel for the City of Jonesboro, as required, prior to the voting and execution of the contracts. Contracts prepared by JETS shall be utilized

unless otherwise mandated or required by other governing bodies. JETS shall not enter into any contract with a period of performance exceeding three years<sup>13</sup> inclusive of options for rolling stock<sup>14</sup> or replacement parts.

- F. The Purchasing Department has full authority to question the quality, quantity, and brand of material and services asked for, in order that the best interest of JETS and the City of Jonesboro may be served.
- G. The City of Jonesboro provides for emergency purchases when there is insufficient time for public advertisement. An emergency purchase is one where there is imminent threat to life, health or property in accordance to the Emergency Policy of the City of Jonesboro<sup>15</sup> and the same with reference to the FTA. Only in such cases may the Coordinator of JETS procure the item upon approval of the Mayor and/or City Council. Complete documentation of the circumstances for the emergency procurement and the quotes shall be forwarded to the Purchasing Agent within two to three business days. The Purchasing Agent shall forward the documentation to the City of Jonesboro Clerk for public announcement at the next City Council meeting for procurements in excess of \$10,000.01. The DBE requirements of the City of Jonesboro's Minority Business Policy will also apply to all emergency purchases.
- H. All bidding/proposing shall be performed in accordance with policies and procedures as called for herein, as well as special policies and procedures required by funding agencies, i.e. FTA, DOT, State of Arkansas, City of Jonesboro, etc.
- I. JETS is not a tax exempt agency of the City of Jonesboro.

**2.0 Approval Level for Purchases** – The following represents the approval levels for non-stock purchase requisitions and must be obtained prior to committing JETS funds. All purchases are before sales tax.

<sup>13</sup> FTA Circular 4220.1E, paragraph 7.m states that although the five (5) year rule has been eliminated for all but rolling stock and replacement part contracts (for which the rule is statutorily required) that Grantees shall not enter into any contracts for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other contract should be based on sound business judgment. This sound business judgment should be evident in the procurement files. Contract extensions will be reviewed with an eye to whether they are in-scope and out-of-scope contract changes. Out-of-scope changes will be regarded as a new procurement and the normal sole source rules will apply.

<sup>14</sup> Rolling stock is defined as the equipment or supplies that is maintained and rotated out on a regular basis. This particular stock is necessary for the daily functions of a company or business.

<sup>15</sup> City of Jonesboro Purchasing Manual deals with the proper procedures when dealing with emergency procurements. These requisitions should be delivered directly to the Purchasing Director rather than placed in the file with other incoming requisitions. Purchase order numbers will be given to authorized personnel over the telephone. This is the only time that a Purchase Order will be given over the phone. (p.14)

<u>Total Request/Contract Amount</u>	<u>Approval or Process Required</u> <sup>16</sup>
(1) Up to \$250.00	Coordinator of JETS
(2) \$250.01 to \$500.00	3 phone quotes, to be faxed/emailed
(3) \$500.01 to \$1,000.00	Purchase request along with quotes
(4) \$1,000.01 to \$1,999.99	Purchase Order along with request
(5) \$2,000.01 to \$10,000.00	Mayor's approval
(6) \$10,000.01 or more	Formal Bidding Procedures <sup>17</sup>

The purchase of items for inventory must be approved by the Purchasing Agent for the City of Jonesboro. The applicable DBE provisions of the Procurement Manual apply to all purchases regardless of value. Abuse of the "Approval Level for Purchases" to circumvent these procedures and achieve a higher procurement level, not otherwise authorized for an individual, will be grounds for disciplinary action up to dismissal.

**3.0 Inventory** – An inventory of materials and supplies that are used on a recurring basis will be maintained, provided that the cost of stocking the item is offset by purchase discounts and/or other operational advantages.

The inventory will be maintained, monitored, and controlled by the Clerical Assistant, Service Worker, and the Accounting Tech. Approval levels for adding an item to stock are based on the unit cost and contract amount.

**4.0 Disadvantaged Business Enterprise (DBE) Program** – JETS procurement process is structured to ensure that DBE firms have the maximum opportunity to compete for contracts. The JETS procurement process is a key element in implementing JETS DBE policy. JETS will identify the number of DBE's who are capable of providing services and supplies. Annually, JETS will identify the number and types of possible contracts to be awarded and the number and types of DBE's likely to be available to compete for contracts. DBE contractors should be encouraged by JETS to compete as prime contractors. JETS will commit to undertaking special efforts to seek socially and economically disadvantaged firms to attain this goal. The Minority Business Plan for JETS upcoming projects is established annually so that JETS will encourage DBE's to respond to all annual procurement opportunities, as well as those on a project-to-project basis.

The JETS Board has assigned high priority to the DBE program. Consideration of DBE participation and providing DBE's the maximum opportunity to compete is a part of all JETS procurement, from the smallest

<sup>16</sup> City of Jonesboro Purchasing Manual *ref* Ordinance #1445, sec, 2-3.3, Purchasing Agent, adopted May 5, 1975 p. 6

<sup>17</sup> Formal Bidding Procedures as outlined in Ark. Stats. 19-4425 (Repl. Sec.3 Act 745 of 1985) Contracts exceeding \$10,000 or for which prescribed procurement procedures have not been followed as specified in the Purchasing Manual or as specified by state law shall be approved by a resolution, in writing, by a majority vote of the City of Jonesboro City Council (Ordinance #3424, 7-21-2003) before preceding with formal bidding procedures to follow according to the City of Jonesboro Purchasing Manual pp. 15-17.



routine requisition to the largest contract. The City of Jonesboro expects all of their undersigned departments and the Service Contractors of Jonesboro, their support personnel and agents who do business with JETS to solicit and encourage DBE participation.

The Purchasing Agent for the City of Jonesboro maintains an "open door" policy and is primarily responsible for the enforcement of the Minority Business Plan established by the City of Jonesboro. The Purchasing Department is integrally involved in the day-to-day operations of the DBE Program. The Purchasing Agent will review all formal procurements with the Purchasing Department and may review other procurements as deemed necessary.

JETS will develop its annual goals and provide an estimate of general procurements including construction, professional services, materials, supplies, equipment, and other items. JETS will offer technical assistance, when available, to DBE's to help facilitate the maximum participation of DBE's in the procurement process. The JETS DBE program includes written procedures to fairly and expeditiously resolve complaints. These complaints can be turned in to the Coordinator for JETS.

**5.0** **Full and Open Competition** – All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- A. Unreasonable requirements placed on firms in order for them to qualify to do business,
- B. Unnecessary experience and excessive bonding requirements,
- C. Noncompetitive pricing practices between firms or between affiliated companies,
- D. Noncompetitive awards to any person or firm on retainer contracts,
- E. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable or potentially unable, to render impartial assistance or advice to JETS; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage,
- F. The specification of only a "brand name" product without listing its prominent characteristics and not allowing "an equal" product to be offered,

G. Geographic requirements, and

H. Any arbitrary action in the procurement process.

## 6.0 Audits

6.1 *Fixed Assets* – Once a year, JETS will inventory and account for all its fixed assets with a purchase price of \$100.00 or more in accordance with FTA Circular 5010.1B. The inventory will consist of the following information:

- a. Description
- b. I.D. Number
- c. Grant Number
- d. Vested Title
- e. Purchase Date
- f. Purchase Cost
- g. Federal Grant Number
- h. Federal Portion
- i. Location
- j. Disposition Data

In addition to the inventory, all FTA funded items will be certified as to their continuing need.<sup>18</sup> All items identified will be documented, tagged, and so noted to the respective area to where the item is charged. At the end of the year, JETS will account for all fixed assets, in accordance with FTA Circular 5010.1C by having an itemized inventory. If an item is missing, there will be an identification made of the item along with its initial use, the probable cause for the misplaced item, and a request for adjustment to the fixed assets records. For those items or real property identified as surplus, a disposal plan will be put into place according to the regulations set forth by the FTA and set into motion by the Purchasing Agent. This plan will be forwarded for review to the JETS Department Head for approval by the Community Transportation Board.

The Accounting Department for JETS will consolidate the audit findings and have the audit certified in a written statement to be presented to the JETS Department Head and then to the JETS Board for review. The report will be submitted to the Coordinator of JETS, the Mayor, the Grants Administrator, and the Purchasing Agent for additional review and/or comments. The latest biennial inventory will be kept in the Accounting Office of JETS.

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<sup>18</sup>In accordance with Circular 5000, "Management of Real Property, Equipment and Supplies," This policy applies only to property that continues to be needed and used for an FTA project or program. It is the FTA intention to assist only in the purchase of property that is needed for an FTA project.

- 6.2 Parts Inventory – JETS will conduct an annual physical inventory of parts and reconcile the inventoried parts-in-stock versus those actually on hand at the end of the year. A variance report will be prepared by the Purchasing Agent and/or the Accounting Department for JETS to identify discrepancies in the count of line items and their value.<sup>19</sup> A copy of the inventory report shall be given to the Coordinator of JETS and the City of Jonesboro Accountant.

## 7.0 Scrap and Surplus

- 7.1 Identification of Surplus/Obsolete Materials, Supplies, Equipment and Scrap - The identification of surplus and scrap shall be the responsibility of the Director and support staff. Equipment shall be surplus when it becomes obsolete to JETS either because it has been replaced by more cost efficient equipment or because the equipment no longer supports the mission of JETS. Such equipment may not be cannibalized when it is determined to be obsolete or surplus, unless purchased by JETS with local funds.

Parts are surplus when stock on-hand exceeds the maximum as established due to the history of demand. Stock levels and order levels will be reviewed for all stock items during inventory.

- 7.2 Disposition of Surplus Stock and/or Equipment – It is the policy of JETS to dispose of surplus stock and equipment in the most effective manner available, and in conformity with FTA Circular 5010.1B, FTA Circular 9030.1B, and FTA Circular 4220.1E and City of Jonesboro Code. All surplus stock and/or equipment shall be appraised by the Purchasing Agent for the City of Jonesboro and a member of the JETS staff to determine fair market value. This equipment will be advertised for disposal by sealed or electronic bid or auction<sup>20</sup>, or traded for new equipment.

Surplus stock/equipment which cannot be returned or sold shall not be sold as scrap while it is still applicable to vehicles in the JETS fleet. The disposition of all surplus materials, supplies and equipment must be authorized by the Board and approved as to price by the Mayor and the City Council of Jonesboro prior to disposition. All sales shall be by a certified cashier's check, a transit system's check or cash. The Accounting Department will be responsible for fixed assets. The

<sup>19</sup> The Federal interest in rolling stock is determined on the basis of straight line depreciation over the service life of the asset. That is, a 12 year minimum service life depreciates 1/12 of its original purchase price each year. The FTA interest in that vehicle therefore decreases each year by 1/12 of the amount of the Federal grant that was awarded for its purchase.

<sup>20</sup> Property can be disposed of during the City of Jonesboro's annual auction so long as all requirements have been met to dispose of the property according to the FTA Regulations for Property Disposal.

Purchasing Department for the City of Jonesboro and the FTA shall be notified in writing of all disposition of surplus stock and/or equipment.

- 7.3 Disposition of Scrap – Parts or equipment identified as scrap shall be sold to the highest bidder of three scrap dealers willing to make bids. The Purchasing Agent or his/her designee is authorized to dispose of scrap.
- 7.4 Disposition of Rolling Stock – All rolling stock with a per unit value of \$1,000.01 or more based upon the approved fair market appraisal value<sup>21</sup> may be assigned to the Reserve or the Emergency Contingency Reserve. Vehicles with the per unit value of \$1,000.01 or more which are not assigned to the aforementioned shall be advertised for disposal by sealed or electronic bid, sold at auction, traded in for new equipment (like-kind exchange), or used as scrap. Disposition shall be authorized by the Board and approved as to price and method of disposal by the Coordinator of JETS and the Mayor prior to disposition.

Rolling stock with a per-unit appraised value of \$1,000 or less may be disposed of by one of the preceding methods. In addition, when JETS and the Board determines that surplus or obsolete rolling stock are of insufficient per-unit value to justify the expense of advertising, the surplus rolling stock may be disposed of as follows.

First, the vehicle may be transferred to local government entities and local government agencies that provide financial and other assistance to JETS. Second, the vehicle may be transferred to a not-for-profit agency or not-for-profit entity of the City of Jonesboro (i.e. Homeless Provider). Transfers shall be on a first come first served basis. Transfer to a not-for-profit agency or not-for-profit entity of the City of Jonesboro shall be limited to one vehicle per agency or entity per transfer if other not-for-profits are on the waiting list, which shall be maintained and determined by the Purchasing Department and the Mayor's Office. After a not-for-profit receives one vehicle, its name shall go on the bottom of the waiting list and the next name shall become first. Transfers shall be authorized by the Board and shall be on an "as is" basis.

All vehicles sold or transferred shall not be returned to JETS for maintenance or disposal unless there is an agreement for such maintenance and/or disposal signed by the Coordinator of JETS with prior approval from the City Council of Jonesboro.

- 8.0 Life Cycle Costing – Life cycle costing is the measure of the total cost of a product over its service life, including maintenance; incidental cost for tools

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<sup>21</sup> Fair market value as determined in Section 7.2 according to the Disposition of Surplus Stock and/or Equipment in regards to FTA regulations as well as City of Jonesboro Code in regards to disposing surplus.

or installation; and expected useful life span. As a general principle, life cycle costing will be considered in all purchases by JETS when possible

JETS reserves the right to apply life cycle costing to purchases in the formal bidding/proposed process, and bidders/proposers may be required to provide information as may be necessary to perform such analysis. If JETS elects to use life cycle costing, it shall be stated in the IFP/RFP.

**9.0 Geographic Preferences** – JETS shall conduct procurements in a manner that prohibits the use of statutory or administratively imposed in state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws; however, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

#### **10.0 Payment Provisions**

**10.1 Payment Discounts** – Payment for specified items shall be net 30 days<sup>22</sup> after acceptance of invoice(s) and required documentation or material/service unless otherwise accepted by JETS during the negotiation process. Bidders/Proposers should note any discounts for early payment. Discounts of 2%/15 days or better from date of acceptance by JETS will be considered in the evaluation.

**10.2 Prompt Payments** – JETS will make every effort to process payments promptly. All payment requests in amounts greater than \$10,000 may be delayed withstanding any penalties.

**10.3 Capital and Planning Purchase Payments** – Payments for capital and planning purchases/services in excess of \$10,000 that will require the draw down of Federal Funds prior to payment will need to have the checks processed within three to five business days or Federal penalties may apply. The extra time needed in this process will need to be minimized. (There may be instances where the City of Jonesboro may need to cover these funds until the draw down is completed.)

**10.4 Advanced Payments** – Advance payments are never authorized and JETS will never participate in funding payments to a contractor prior to the incurrence of costs by the contractor, unless prior written agreement is obtained from the FTA.

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<sup>22</sup> City of Jonesboro Accounts Payable check processing schedule is the 10<sup>th</sup> and 23<sup>rd</sup> of each month.

**10.5 Progress Payments** – JETS may use progressive payments provided the following requirements are followed and met:

- a. Progress payments are only made to the contractor for cost incurred in the performance of the contract.
- b. When progress payments are used, JETS must obtain title to the property (materials, work in progress, and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect JETS' interest in the process payments may be used in lieu of obtaining title.

**11.0 Liquidated Damages** – Liquidated damages are an amount assessed a contractor when it fails to complete delivery, installation, services, or the work specified in a contract within the contract period of performance or schedule which causes increased cost to JETS, the extent of which actual damages would be difficult or impossible to assess. Liquidated damages are most often utilized in construction contracts.

If JETS determines that a liquidated damages clause is necessary in a contract, the Purchasing Agent shall document the origin of the rate of assessment prior to the solicitation. The City Attorney shall review this documentation to ensure it is reasonable, proper, and not arbitrary to any City of Jonesboro Codes, Statutes, or Policies. If liquidated damages are assessed during the course of the project, the reason for the assessment shall be documented prior to the assessment and become a part of the contract file. The Contractor shall be notified in writing immediately of this reason once JETS becomes aware of the delay or the deficiency. The amount shall be deducted from the next invoice for the particular project in which the delay or deficiency occurred. The Service Contractor, the Coordinator of JETS, the Grants Administrator for JETS, and other necessary facilitators for the project shall be notified of the delay or deficiency prior to the assessment of the liquidated damages. All documentation shall become a part of the contract file.

Appeals from contractors of assessment of liquidated damages must be submitted in accordance with the procedures outlined in Section VIII (4.5) Appeals.

### **III. RESPONSIBILITIES**

The authority to award all contracts of \$10,000 or greater relating to JETS rests with the City Council of Jonesboro. The City of Jonesboro holds the sole contracting authority for JETS. This awarded authority cannot be delegated to the members of the JETS Community Transportation Board, the Coordinator of JETS, or JETS staff or its affiliates under any circumstances. Furthermore, all procurement matters and acts associated with procurement should be subject to and in compliance with the policies, procedures, resolutions, and ordinances of the City of Jonesboro, FTA, AHTD, and JETS.

The general JETS procurement function is the responsibility of the Coordinator for JETS and the Accounting Department of JETS. Supporting the Coordinator for JETS is the Accounting Tech, Administrative Assistant, Administrative Grant Specialist, and/or the Board. By centralizing responsibility, JETS can assure close control and scrutiny of the procurement process, and consistent application of its procurement policies and procedures. The administrative responsibilities when dealing with procurements will consist of the Coordinator for JETS, Purchasing Director for the City of Jonesboro, the Accounting Tech for JETS, the Board for JETS, the City Council, the Mayor and Legal Counsel for the City of Jonesboro.

**THIRD DRAFT**

#### **IV. ACQUISITION PLANNING**

**1.0 Initiation of Procurement** – JETS staff who initiate a project are responsible for providing the in-house independent cost estimate, the technical specifications and drawings for equipment, materials, and service contracts. Preparation of technical requirements/statements of work for contracts shall be the responsibility of the project's staff member.

Technical specifications or statements shall set forth the minimum essential characteristics or standards and shall not include any features that may unduly restrict competition. Brand name descriptions are only to be used when it is impractical or uneconomical to provide a clear and accurate description of the product. When brand names are used in specification, the term of "approved equal" must follow the brand name. Brand name or "approved equal" specifications must include a description stating the salient characteristics of the brand name item.

Initiators are responsible for providing the following information to the Coordinator of JETS in order for them to establish the procurement strategy to be used:

- a. Product/service description;
- b. Desired delivery schedule;
- c. Progress reporting requirements;
- d. Technical evaluation criteria in order of merit and weight recommendation;
- e. Special terms and conditions for the contract; and
- f. Contact person of potential vendors if the City of Jonesboro Purchasing Department does not have a list for the item/service;
- g. Purpose/nature for procurement.

For purchases of parts, tools, equipment for JETS', bus fleet, service vehicle fleet or facilities requested by the Service Worker, Driver Supervisor, a work order shall be prepared which lists the work required. The work order shall be prepared by either a driver, a supervisor, the Coordinator of JETS or Service Worker. The work order shall contain the date assigned, the vehicle number and mileage or, if the work is not related to a vehicle, a description of the item, the estimated number of hours required for the work and the major components and subcomponents required in completing the work. The work order shall also contain the AHTD vehicle assignment number, the last known driver, supervisor, and/or service worker, their comments on the work required including the type of work (i.e. scheduled maintenance, road-call, body work, recalls, etc.) to be completed. The reference information of the Service Company or mechanic responsible for completing the work shall also be listed on the work order.



Each work order shall include the work order number, description of work required, vehicle number, if applicable, the mechanic identification number, and supervisor's signature. The work order shall also include the part number, if available, a full description, the quantity required, and service account number. The JETS Accounting Department shall reject work order requests for payment if the proper documentation of all required and requested information is not submitted with the work order.

When a component or subcomponent will need to be rebuilt the company responsible for the initial rebuild, will need to submit a cost quote for the required rebuilt component to the JETS Accounting Department. The quote shall include the part number, if available, a full description, the quantity required, cost, and the vehicle number on which the rebuilt part will be installed.

**2.0 Right to Reject Bids/Proposals** – JETS reserves the right to reject all bids or proposals and reselect or cancel the procurement if deemed by JETS to be in its best interest.

**3.0 Release of Procurement Request** – All procurement requests, including IFPs and RFPs, shall not be provided to any bidder/proposer or potential bidder/proposer before making a public advertisement as specified in Section V, 3.0, **Advertising**. As to procurements that are not subject to advertising, no potential vendor or supplier will be given the procurement request in advance of the formal commencement of the procurement process.

**4.0 Methods of Procurement** – The following methods of procurement may be used as appropriate. The Purchasing Agent for the City of Jonesboro will work with the Coordinator of JETS to determine the most appropriate method of procurement including:

- a. Purchase Requisition
- b. Emergency Purchase
- c. Petty Cash
- d. Purchase Order and Contract
- e. Check Request
- f. Invitation for Bids (IFB)
- g. Requests for Proposals (RFP)
- h. Request for Qualifications (RFQ)
- i. Non-Competitive Procurements

JETS will maintain written records detailing the history of procurement. As a minimum, these records shall include:

- a. The rationale for the method of procurement
- b. Selection of contract type

- c. Reasons for contractor selection or rejection
- d. Negotiation documentation
- e. The basis for the contract price

4.1 Purchase Requisition – The purchase requisition shall, in most instances, be completed and approved prior to the commitment of any JETS funds. The exceptions include:

- a. Emergencies coordinated through the Purchasing Department.
- b. Maintenance tools and parts necessary to maintain the availability and safety of the fleet and other allied equipment.

4.2 Emergency Purchase – In the event of an emergency, as determined by the Director, where there is imminent threat to life, health, or property, there would be a detrimental effect on JETS operation; and there is insufficient time for advertising in newspapers as required, any item to be purchased or service or work to be performed may be authorized. An emergency is defined as “imminent threat to life, health, or property.” This means a real and present threat exists to the life and welfare of the public or City of Jonesboro Personnel, JETS, JETS employees, JETS property or the provision of transit service that can reasonably be expected to be alleviated by the purchase requisition. There must also be insufficient time to advertise for bids/proposals. JETS shall document the procurement and forward all documentation to the Purchasing Department for processing. emergency procedures will not be used to circumvent established policies or procedures. The City of Jonesboro City Council will approve all emergency procurements of equipment or services totaling \$2000 or greater. The Coordinator of JETS, the Mayor of the City of Jonesboro, and if required, the Legal Counsel for the City of Jonesboro must make a written finding for each emergency purchase totaling \$2000 or greater, which must be publicly announced at the next City of Jonesboro City Council meeting at which contracts are awarded. The Director and the Accounting Department of JETS shall forward complete purchase documentation to the Chair of the Public Service Committee before the City Council meeting to have this request approved.

4.3 Petty Cash Purchases – Petty cash may be used for purchases up to \$30 per purchase. Petty cash procedures will not be used to circumvent established policies or procedures.

4.4 Purchase Orders and Contracts – It shall be the responsibility of the Coordinator of JETS and the Accounting Department of JETS to coordinate with the staff to determine the best method for procurement.

Competition will be encouraged by the following guidelines:

a. Purchases less than \$500: Obtain quote from one or more reputable sources. Procurements under this category are exempt from documentation requirement from sole source procurements.

b. Purchases \$500 but less than \$1,000: Three or more quotations will be obtained. These may be from a price book, by telephone, by internet, or by fax.

c. Purchases \$1,000 but less than \$2,000: Three or more quotations must be obtained either from a price book, by written quote by internet or by fax. A purchase order will be required for this purchase before a request can be sent.

d. Purchases \$2,000 but less than \$10,000: Three or more quotations must be obtained directly from the purchasing source either by mail, internet, or fax. No book quotes will be accepted. These quotes must contain a contact person.

e. Purchases exceeding the untaxed \$10,000: Formal Request for Bids Proposal must be issued.

4.5 Check Request or Direct Pay Items – Certain expenses are routinely incurred without the issuance of purchasing documentation. The expenses typically include the following types of items:

- a. Periodic vendor payments, under established leases
- b. Licenses and permits
- c. Conference and registration fees
- d. Annual organizational and professional membership dues
- e. Refunds (returns of bid deposits, overpayments of bus passes, etc.)
- f. Reimbursement of petty cash accounts and funds transfer
- g. Utility and phone bills
- h. Travel advances and employee reimbursements
- i. Investigative expenses
- j. Settlement of claims and litigation
- k. Postage
- l. Subscriptions to magazines, newspapers, periodicals, or trade journals.

For some of these items, JETS will receive a bill or invoice and, for others JETS bears the responsibility for meeting a scheduled payment without an invoice or reminder from the payee. Since the usual purchasing paperwork (i.e. Purchase Requisition, Purchase Order) is not present from approval documentation for the types of items listed above, a Check Request is usually issued to authorize and order payment. All such check requests

must be submitted to the Accounting Department then to the Director for the appropriate signatures for payment.

4.6 Invitation for Bids (IFB) (over \$10,000) – Bids are formally advertised and a firm-fixed price contract (lump sum or unit price) is awarded to the lowest and best bidder. Lowest and best will mean the lowest responsive and responsible bidder.

a. Responsive Bidder: The responsiveness of the bid itself is determined by its conforming to the technical and legal requirements of the bid documents.

b. Responsible Bidder: The term responsible refers to a bidder's financial resources, judgment, skill, integrity, and ability to fulfill successfully the requirements of the contract.

4.6.1 An IFB will be used when:

- a. A complete, adequate and realistic specification or description is available
- b. Two or more responsible bidders are willing and able to compete effectively for the business
- c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price
- d. No discussion with bidders is needed

4.6.2 If the procurement method is used the following requirements apply:

- a. The IFB will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids
- b. The IFB, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond
- c. All bids will be publicly opened at the time and place described in the IFB
- d. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest; and
- e. Any or all bids may be rejected if there is a sound, documented business reason

4.6.3 The sealed bid method is the preferred method for procurement construction if the conditions in paragraph 4.6.1. in this section apply.

#### 4.7 *Competitive Technical Proposals*

4.7.1 *Request for Proposals* (RFP) – (Over \$10,000). Proposals are formally advertised and a fixed fee or cost-reimbursement type contract is awarded to the responsible proposer whose proposal is most advantageous to JETS with price and other factors considered. RFP's will be publicly advertised.

An RFP will include;

- a. All evaluation factors listed in order of their relative importance in determining the most responsive proposer.
- b. Proposer will be solicited from an adequate number of qualified sources.
- c. A written procedure for conducting the technical evaluation of proposals. If so stated in the RFP, the selection may be made on the basis of original proposals with or without negotiation with any proposer. If negotiation is used at all, JETS must negotiate with all proposers that it determines have a reasonable chance of being selected (i.e. proposers within the competitive range).
- d. Awards will be made to the responsible firm whose proposal is most advantageous to JETS with price and other factors considered except for procurements of architectural/engineering related services as outlined below.
- e. Architectural/Engineering (A&E) services and A&E related services such as program management, construction management, feasibility studies, preliminary engineering, value engineering, design surveying, mapping, or related services shall be procured using the "Brooks Method"<sup>23</sup> as defined in 40 U.S.C. § 541. Following this method, proposers qualifications are evaluated and the most and

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<sup>23</sup> Procurement of Architectural and Engineering Services (A-E). Grantees 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. Section 1102 and U.S.C. Section 5325(d). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

reasonable compensation<sup>24</sup>. Under this method, JETS may not consider price as an evaluation factor in determining the most qualified proposer. Negotiation is conducted with only the most qualified proposer. If JETS is unable to arrive at an agreed price with the proposer, negotiations are terminated with that proposer, and the negotiation process is begun with the next most qualified proposer. This method of procurement cannot be used to obtain other types of services even though a firm that provides the above types of services is also a potential source to perform other services.

**4.7.2 Negotiated Contracts** – This section outlines JETS procedures for competitive negotiated procurements. It is applicable to all Professional Services procurements of JETS and any other procurement when it is not possible to fully detail the scope or quantity of the services or goods to be obtained so that a sealed bid could be received. **JETS reserves the right to utilize state and local law for professional service contracts, as appropriate, when federal or state funds are not being used in the contract, in whole or in part.**

Proposals or qualifications leading to negotiated procurement shall be solicited from an adequate number (normally a minimum of three) of potentially qualified proposers in order to maximize free and open competition. JETS also reserves the right to enter into a contract with any proposer based upon the initial proposal or on the basis of a best and final offer without conducting written or oral discussions; provided, the solicitation specifically stipulates this reservation of JETS rights. Execution of any aspect of the contract is dependent upon approval by the Jonesboro City Council and upon the negotiation of a mutually acceptable contract with the successful proposer, if required.

**4.8 Non-Competitive Procurements** – (Sole Source, Single Bid, or Options).  
All procurements of \$10,000 or greater will be advertised at least every

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<sup>24</sup> FTA has expanded this section to better explain the breadth of this statutorily prescribed procurement method. FTA recognizes that most of the services listed (e.g., surveying) are not performed by architectural or engineering services companies. Qualifications-based competitive proposals (i.e., Brooks Act procedures) still must be applied to these procurements because of the statutory directive in 49 U.S.C. Section 5325(d)

two years, or sooner, if such need is determined by JETS or the City Council of Jonesboro, to ascertain whether or not competition still exists. The response of a single bidder or sole source supplier may be used as documentation in support of a sole source purchase for two years immediately following such advertisement. On an annual basis, the Purchasing Agent of the City of Jonesboro will publish an Advance Notice of Upcoming Purchases which lists procurements JETS anticipates making during the period covered by the Advance Notice. The Advance Notice will include items \$5,000 or above and may include items under \$5,000 when the lists are updated. The Advance Notice will state that JETS has a DBE policy, that additional information as to the DBE policy can be obtained from the City of Jonesboro Purchasing Agent and that the additional information as to any item contained in the Advance Notice of Upcoming Purchases, including a request to be added to the mailing list or list of telephone quotes, can be obtained from the Purchasing Agent. The Advance Notice of Upcoming Purchases will be published on the JETS web page, on the City of Jonesboro web page.

**4.8.1 Sole Source** – Sole source procurement is accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within sole source definition must identify competition to be inadequate. A contract amendment or change order that is not within the scope of the original contract is a non-competitive negotiation that must comply with this sub-paragraph.

a. Procurement by non-competitive negotiation may be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposal and at least one of the following circumstances applies:

- i. The item(s) is/are available only from a single source;
- ii. The need for the requirement will not permit a delay resulting from competitive solicitation;
- iii. FTA authorizes non-competitive negotiations;
- iv. After solicitation of a number of sources, competition is determined inadequate; or
- v. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. JETS will certify in writing to the FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is

not higher than the price paid for such item by like customers.

- b. A cost analysis, 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.
- c. City law permits sole source procurements only as to copyrighted publications and films or novelty items such as candy, t-shirts, and souvenirs. This is one of the few areas in which City law imposes greater restrictions than federal law. Such procurements shall not be exempt from DBE requirements.
- d. Even if a procurement meets all other criteria for a sole source procurement in 4.8.1(a) unless it also fits within one of the above-listed categories under City law, the procurement must be formally advertised if it is \$10,000 or over.

Written justification for any sole source or single bid procurement shall be maintained in the contract file by the Purchasing Agent for the City of Jonesboro, and the JETS Accounting Department. Such justification shall include a market survey and the basis for determining the fair and reasonable price. Sole source procurements or procurements for brand name products must be properly justified in writing by JETS Department Head to the satisfaction of the Purchasing Agent.

*4.8.2 Single Bid* JETS may award a contract to a single bidder provided that an analysis can be completed which documents that the price is fair and reasonable. If JETS has advertised for bids and no other acceptable bid has been received, JETS may proceed with a negotiated contract for the work, service, or product with the apparent lowest and best bidder. JETS cannot negotiate with a vendor who did not submit a bid. The negotiations must be fully documented in writing.

*4.9 Contract Options* – The Federal Acquisition Regulation (FAR) defines an option as: A unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies or services called for by the contract or may elect to extend the term of the contract.

The award of options is subject to approval by the City Council of Jonesboro.



When used properly, options can greatly increase the flexibility of JETS. Prior to inserting an option clause in any solicitation document, the Coordinator of JETS shall obtain approval of the Mayor or the City Council. Options shall not be added to procurements if they were not included in the solicitation document. The Coordinator of JETS should ask several questions to determine the best interest of JETS before electing to include an option clause in a solicitation document. Such questions should include:

- a. How long may the period for option renewal last?
- b. What is considered an appropriate option quantity (in relation to the base quantity)?
- c. How may option prices be evaluated in the selection process?

**4.9.1 Use of Options** – JETS will follow the provisions of FTA Circular 4220.1E as follows:

- a. Evaluation of Options – The option quantities or periods contained in the bid/proposal/quote must be evaluated in order to determine award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
- b. Exercise of Options:
  - i. JETS must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract/purchase order awarded.
  - ii. An option may not be exercised unless JETS 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.

**4.9.2 Contracts** –

- a. The total of the base and option periods shall not exceed two years in the case of services and requirements contracts and any such options for three to five year service contracts shall be reviewed and approved by the Mayor and the City Council with prior legal review from the City of Jonesboro Legal Counsel before execution.
- b. The contract shall specify the firm price for the products or services for the specified option period.

**4.10 Time and Material Type Contracts** – JETS will use time and material type contracts only:

- a. After a determination that no other type of contract is suitable; and,

- b. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

**5.0 Procurement Summary** – This document is a tabulation of bid/proposals received, a technical analysis of the bids/proposals, reasoning for the determination of a successful bidder/proposer, an explanation of the specific procurement process for a specific contract, the basis of contractor selection, the basis for type of contract and results of negotiations, if applicable. This document should justify in writing the selection of a specific contractor. The Coordinator of JETS is responsible for the preparation of the document. It shall be reviewed as to form and content by the Purchasing Agent.

**6.0 DBE Acquisition Planning** - The Purchasing Agent shall maintain a current list of certified DBE vendors. If the DBE has expressed interest in providing certain goods (e.g., bus filters, bus batteries) or certain services (e.g., electrical HVAC, plumbing); it shall be maintained on the list. The list will reflect all such goods and services. Vendors included will have already been certified. The DBE vendor list will be used by JETS management and staff as a reference to assure that qualified DBE vendors are certified and are included during the beginning stages of an acquisition and at all planning levels of procurement.

JETS Accounting Department will also maintain DBE directories compiled by other governmental entities. Many of the DBE directories serve two useful functions. First, the directories serve as a potential source for DBE participation on JETS contracts, particularly in areas in which JETS is not aware of the DBE existence. JETS management and staff should consult the DBE directories maintained by the Purchasing Department. Second, the DBE directories are a useful tool in responding to potential vendors' requests for technical assistance and guidance in maximizing their DBE participation.

**7.0 Use of Capital and Planning Funds for Procurement** – Before making a procurement for capital equipment or construction or planning services with operating funds a requestor will first ask the Grants Administrator or Accounting Department if such an expense can be offset by existing capital and planning funds available.

## V. SOLICITATION

**1.0 Bidders/Proposers List** – Lists of Bidders/Proposers for equipment, construction, and service procurements shall be maintained by the Purchasing Department for the City of Jonesboro. The lists shall be reviewed for additions and deletions. Additions to the lists shall be sought through trade journals, trade shows, surveys of other operations and at the request of vendors.

JETS shall ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, JETS shall not preclude potential bidders/proposers from qualifying during the solicitation period, which is from issuance of the solicitation document to its closing date.

Deletions from the list shall be based on a determination of non-responsibility by the Purchasing Department or at the Bidder/Proposer direction. This determination may be based upon the City of Jonesboro's experience by other agencies.

JETS shall afford potential Bidders/Proposers the opportunity to be placed on the Bidders/Proposers List as part of the advertisement of the Advance Notice of Upcoming Purchases as described in Section V, 3.0 below, Advertising. No potential Bidder/Proposer shall be precluded from the list.

**2.0 Preparing the Solicitation** – The Purchasing Department of the City of Jonesboro will be responsible for providing a list of potential bidders and proposers, coordinating all formal bids and placing the required advertisements. The potential bidders/proposers list will be reviewed and approved by the Coordinator of JETS and the Purchasing Department before the IFB/RFP is mailed. Bids will be solicited in writing from a sufficient number of vendors on the appropriate bidders/proposers list. Bidders/proposers shall be provided sufficient time to respond to IFBs/RFPs.

Specifications under normal circumstances shall be prepared by the Coordinator of JETS and approved by the Purchasing Agent. The Purchasing Department will coordinate with the Coordinator of JETS to determine the most appropriate method of procurement and to avoid exclusionary or discriminatory specifications in accordance with regulations at 49 U.S.C. § 5323(h)(2). A purchase requisition and cost estimate will be completed, approved and forwarded to the Purchasing Department when technical specifications are first prepared.

The Accounting Department shall be responsible for submitting the following to the Purchasing Department when requisitioning a product or service:

- a. A completed requisition including a complete description, including part number, if applicable, quantity, date required, account number to be charged, and Director's approval;
- b. List of vendors for non-stock procurements;
- c. Drawings/Diagrams, if required;
- d. Statement of Work (Scope of Work, Specifications);
- e. Cost estimate or quote; and
- f. Amount of liquidated damages (if applicable) and documentation of the derivation of the rate of assessment.

The Purchasing Department is responsible for assembling the solicitation package. A solicitation package includes instructions to bidders/proposers, technical specifications and plans, drawings, or blue prints, if applicable, any special terms and conditions recommended by JETS, the general contract provisions required by the federal, state, and local governments, the proposed contract terms and conditions, and the evaluation criteria that will be utilized to determine contractor selection.

All departments and groups involved in the preparation of the IFB/RFP shall review the portions for which they are responsible. Every IFB/RFP in excess of \$10,000 will be reviewed and approved for release by the following persons in order:

- a. Requestor
- b. Coordinator of JETS
- c. Accounting Department (JETS)
- d. Community Transportation Board (when applicable)
- e. Community Action Board (when applicable)
- f. Mayor
- g. Legal Counsel (when applicable)
- h. City Council
- i. Finance Department

When all reviews have been completed and approvals obtained, the Purchasing Department will make any corrections or changes noted and issue the final documents to prospective bidders/proposers. Exceptions to these requirements are:

- a. Requirements of an unusual or compelling urgency wherein JETS would be seriously injured if bids/proposals were permitted to be made more than 10 days from date of advertising.
- b. Modifications to existing contracts that were advertised prior to award.

For negotiated procurements, the Coordinator of JETS shall provide to the Purchasing Department a detailed independent estimate for the required services with the purchase requisition. The independent estimate shall be utilized as a basis to establish the competitive range for the resultant negotiations with

potential contractors. This estimate must be computed prior to the bids/proposals being received.

Solicitations for Professional Services (other than A&E) such as legal services, audit services, management consultants, and other professional services shall require submittal of both technical and cost proposals. After technical and cost evaluations have been completed, negotiations will be entered into with all firms determined to be in the competitive range and shall include all proposers who have a reasonable chance of being selected for award. The final selection shall be made at the conclusion of formal negotiations and based upon the evaluation of best and final offers unless the determination has been made to award on the basis of the initial proposals without conducting discussions with any of the competing firms. [The Qualification-Based Procurement Method will be used for A&E related services, such as program management, construction management, feasibility studies, preliminary engineering design, surveying, mapping or related services.]

**3.0 Advertising** – All IFBs/RFPs in excess of \$10,000 will be advertised on the date of their release to the public in a newspaper published and circulated in the City of Jonesboro. They may also advertise in local and national minority newspapers or other publications depending on the size and nature of the procurement. If the project complexity warrants wider circulation to insure adequate competition, advertising shall be placed in trade journals/magazines, or other mass communication media. The Purchasing Department shall send the advertisements to the necessary publications.

In addition to the above advertisements, all IFBs/RFPs for equipment, construction projects and professional services in excess of \$10,000 will also be publicly advertised in advance of the bid/proposal due date in a manner to provide bidders/proposers sufficient time to prepare bids/proposals. Such advertisement shall coincide with the release of the IFB/RFP. In no event shall the IFB/RFP be provided to the potential bidder/proposer before making such advertisement. From time to time, JETS will provide "Advance Notices" of intent to solicit bids/proposals for particular products, equipment, materials, or services within an estimated time frame. In no event shall information as to the bid/proposal be provided to any potential vendor prior to formal publication of the "Advance Notice." The intent of the "Advance Notice" is to stimulate interest in the pending IFB/RFP. Proof of advertising shall become part of the contract file.

On an as needed basis, the Purchasing Department will publish an Advance Notice of Upcoming Purchases which list procurements JETS anticipates making during the period covered by the Advance Notice. The Advance Notice will include items totaling \$10,000 or above and may include items under \$10,000 or requiring a Purchase Order. The Advance Notice will state that JETS has a DBE program, that additional information as to the DBE program can be obtained

from the Purchasing Agent for the City of Jonesboro, and that the additional information as to any item contained in the Advance Notice of Upcoming Purchases, including a request to be added to the mailing list or list for telephone or fax quotes, can be obtained from the Purchasing Agent. The Advance Notice shall be published in local minority newspapers and other publications and distributed to organizations promoting minority business enterprises.

**3.1 Shortened Bidding Time** – For FTA funded projects, solicitation time is at least 20 calendar days for procuring standard commercial items, and shall be at least 30 calendar days when procuring other than standard commercial items. The solicitation period may be shortened under special circumstances only when justified and documented in the contract file. This documentation should include all pertinent facts and reasons for shortening the solicitation time, including any possible detrimental effects to JETS if the time is not shortened. JETS will be responsible for preparing this documentation.

**4.0 Bid & Performance Bonds** – The Purchasing Agent is responsible for recommending to the Mayor when bid and performance bonds are to be required, and for indicating the bond requirements in the solicitation document.

State law and city law require (1) a 5% bid bond and (2) a 100% payment and performance bond for all construction projects over \$3,000. Bid and/or performance bonds may be required in connection with the purchase of supplies, materials, and equipment only when:

- a. Deliveries are scheduled and made over a period of time and the item purchased is likely to be subject to price increases during that period.
- b. A time schedule must be met to avoid added expense or liability to JETS.
- c. Quality of item must be tested or a standard of service must be maintained over a period of time or where a warranty might not offer sufficient protection to JETS.
- d. In the judgment of the Purchasing Agent, the nature of the purchase is such as to warrant a bid and/or performance bond requirement.

The bid bond serves as a guarantee so that if JETS awards a contract to the bidder/proposer, they will promptly execute the contract and provide a performance bond (if a performance bond is required by the IFB/RFP/RFQ).

**5.0 Communications with Bidders/Proposers and Potential Bidders/Proposers** – The Purchasing Department will provide technical assistance and guidance to bidders and prospective bidders. Communications with bidders/proposers and potential bidders/proposers after the IFB/RFP is issued will be only through the Purchasing Department, or the person designated by JETS in the IFB/RFP. After the release of the IFB/RFP, all other communication must be in writing to

the City of Jonesboro Purchasing Department. JETS' response will be sent to all bidders/proposers and prospective bidders/proposers via mail. JETS staff will direct/redirect all inquiries from bidders/proposers and prospective bidders/proposers to the Purchasing Department of the City of Jonesboro. Any bidders/proposers/ and prospective bidders/proposers will be banned from participating in the bid process any further if it is discovered that improprieties have taken place. Any JETS staff member who discloses any information concerning the bids without prior authorization, will receive a reprimand.

#### 6.0 Insurance

- a. The Legal Counsel for the City of Jonesboro will review JETS contractual involvement to evaluate such contracts' impact on JETS risk of exposure.
- b. JETS will identify exposures with the view of risk to JETS in mind, and will define a plan of insurance and safety commensurate with the risk
- c. The evaluation process is subjective; therefore, insurance and safety requirements will vary commensurate with the risk to JETS. The range for insurance requirements will be from none to quite extensive.
- d. Coverage and limits, so dictated, will be maintained within the bounds of "reasonable and prudent", in keeping with sound procurement practice.
- e. The insurance and safety requirements will be established on a case-by-case basis. The Legal Counsel for the City of Jonesboro shall submit a recommendation to the JETS Director and Accounting Department for JETS insurance program and shall implement his/her decision.
- f. When insurance is required, a detailed form stipulating the exact requirements will be attached to the specifications. The insurance requirements will be in a format that can be added verbatim to the IFB or RFP. Insurance companies providing insurance will be required to meet or exceed a certain rating as specified by JETS. They must be licensed in Arkansas and have an agent to receive official notices in Craighead County. (This does not mean that the policy must be written or issued by an insurance agent in Craighead County.) JETS also requires that JETS and the City of Jonesboro be added to the insurance policy as co-insurers, and that JETS be given 60 days advance notice by the carrier of cancellation or renewal.
- g. Questions regarding matters of insurance pertaining to the contract shall be addressed to the Purchasing Agent who shall respond directly to all inquiries. Please note that JETS will receive any information concerning requests to be forwarded to the Coordinator of JETS.
- h. Certificates of Insurance required in the contract will be included with the bid/proposal for review. If the insurance is not in order, the Purchasing Department in consultation with the Coordinator of JETS will identify the areas of non-compliance and implement whatever procedure is necessary to correct the matter.
- i. The Coordinator of JETS, with the Purchasing Agent for the City of Jonesboro will monitor compliance with insurance requirements throughout

the duration of the contract and will correct matters of non-compliance as they occur.

- j. The Purchasing Agent is responsible for obtaining renewal certificates during the life of the contract.
- k. Upon contract completion and settlement of all insurance claims and/or litigation, all documents that could be relevant to the contract will be forwarded to the Purchasing Department and/or Legal Counsel for the City of Jonesboro for inclusion in the official file.
- l. The Contractor will be required to report all claims to their appropriate insurance carrier. Incidents that may result in claims against the contract and/or JETS should be reported to JETS immediately. The Purchasing Agent and/or Legal Counsel should report any incidence to the JETS Project Manager, who will investigate on behalf of JETS. The Contractor will be advised by the Legal Counsel for the City of Jonesboro to give full cooperation to the JETS Project Manager. Under no circumstances should any involving parties negotiate claims for damages by third parties against JETS. Any such request for negotiation should be referred to the Legal Counsel for the City of Jonesboro and the Mayor for review.

**7.0 DBE Solicitation** – All JETS procurements shall solicit DBE participation. For bids and proposals, the Purchasing Agent for the City of Jonesboro shall consult with the DBE Liaison for the City of Jonesboro and the Coordinator of JETS to determine appropriate participation goals for DBE contractors. A contract project goal may be established which ranges from a small percentage to a percentage in excess of the annual DBE goal reported to FTA, depending on the joint determination by the Purchasing Agent for the City of Jonesboro, the Coordinator of JETS and the DBE Liaison for the city of the availability of certified DBE firms to provide the product to service. For procurements in which a small percentage is determined to be the contract goal, contractors should still be encouraged to identify opportunities for minority participation, such as shipping for equipment orders. This goal is then incorporated into the evaluation criteria for the procurement. In all contracts, JETS' normal practice will be to require the Contractor to report DBE participation levels whether a goal has been set or not. The Purchasing Agent shall consult with the DBE Liaison as to the availability of certified DBEs for the particular contract or purchase.

In all IFBs/RFPs JETS shall insert a clause stating that in situations involving a procurement with a particular percentage DBE goal, if no bidder/proposer meets or exceeds the specs, JETS reserves the right to award the contract to the bidder/proposer with an acceptable DBE participation rate, price and other factors being considered. The determination of the acceptable DBE participation rate shall be made by the DBE Liaison.

Bidders/Proposers shall also be notified that JETS reserves the right to award a contract under \$10,000 to a certified DBE whose bid/proposal is within five



percent (5%) of the lowest and best bidder/proposer, price and other factors being considered.

For contracts and/or purchases of less than \$50,000 the Purchasing Agent will provide DBEs, currently certified and offering the products or services required by JETS for the particular contract or purchase, an opportunity to bid on the product or services.

All written solicitations and contracts over \$10,000 of JETS shall include what is known as "Utilization of Disadvantaged Business Enterprises" as a part of its documentation.

The DBE Liaison shall submit a report to the Mayor and the Coordinator of JETS quarterly showing the actual DBE expenditures by JETS during the previous quarter.

**8.0 Compliance with Davis-Bacon Act**<sup>25</sup> – All procurements involving construction in excess of \$2,000 shall include a copy of the labor provisions from the City of Jonesboro, along with the appropriate and most recent wage rates for Craighead County, Arkansas. Contractors will be required to comply with the labor provisions and submit weekly payroll records for the construction work.<sup>26</sup> Such records shall be sent to the Purchasing Agent for the City of Jonesboro, the Grants Manager for JETS, the Accounting Clerk for JETS, and the Legal Counsel for the City of Jonesboro for any greater than or equal \$100,000.

All procurements of \$2,000 or greater shall require bidders/proposers to submit a Davis-Bacon Certification Form with their bid/proposal to signify that they are cognizant of the Davis-Bacon Act Regulatory Requirements.

**9.0 Warranty** – Warranty provisions shall be included in all solicitation documents for the procurement of construction, equipment, service, and supply contracts as necessary.

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<sup>25</sup> The Davis-Bacon Act as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates.

<sup>26</sup> <http://www.dol.gov/esa/regs/statutes/whd/dbra.htm> The web site deals directly with the Davis-Bacon Act Regulations. If any participating contractor fails to comply with these regulations the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

## **VI. EVALUATION**

**1.0 Evaluation Committee** – An Evaluation Committee shall be appointed by the Mayor of the City of Jonesboro after consultation with the Purchasing Agent and the Coordinator of JETS before the preparation of the IFB/RFP. It may consist of each of the following:

- Purchasing Agent
- Technical Staff Members
- Coordinator of JETS or Staff Member
- JETS Community Transportation Advisory Board Member
- City of Jonesboro Public Services Committee Member
- Others as designated

The Coordinator of JETS in consultation with the Purchasing Agent, the Contract Administrator, the Legal Counsel for the City of Jonesboro, and the Project Manager shall establish written evaluation criteria for the procurement that shall be a part of the solicitation. The weighting of the selection criteria will be established in writing during the preparation of the RFP/RFQ.

**2.0 Sealed Bids/Proposals** – All bids/proposals shall be deemed received by JETS when received by the Purchasing Department Office located at City Hall at 515 West Washington, Jonesboro, AR 72401 unless instructed otherwise in the solicitation documents. Bidders/Proposers are solely responsible for ensuring that his/her proposal is timely received. Bidders/Proposers who rely on overnight delivery services, the United State Postal Mail, private mail services, local couriers or delivery services remain solely responsible for timely delivery of the bid/proposal and assume all risk of late delivery, mis-delivery, and non-delivery.

All bids/proposals will be date/time stamped, logged and deposited by the Purchasing Agent for the City of Jonesboro.

Bids/Proposals must be securely sealed, have either a JETS-provided label or City of Jonesboro Purchasing Department label or seal and be clearly marked 'BID' or 'PROPOSAL'. This initial step is included to insure no tampering with the bids has taken place.

Because of security reasons, Purchasing will only receive bids/proposals during regular business hours (8:00 a.m. until 4:00 p.m., Monday through Friday, excluding holidays). Bidders/Proposers are reminded of their sole responsibility for ensuring that their bid/proposal is timely received by the Purchasing Department.

Bidders/Proposers may verify receipt of bids/proposals by contacting the Purchasing Department.

In some instances, such as consultant contracts, the IFB/RFP will require bidders/proposers to submit a Technical Proposal and a separately-sealed Price Proposal (or Cost Proposal).

In the event a bidder/proposer feels that a certain portion of its bid/proposal contains trade secrets, confidential information or proprietary information, the bidder/proposer must place all such information in a separately sealed envelope which is prominently marked as containing confidential or proprietary information. JETS will not release such information to third parties without the consent of the bidder/proposer, or unless required to do so by law or by order of a court of competent jurisdiction.

**3.0 Withdrawing Bids/Proposals** – Each and every bidder/proposer who submits his bid/proposal specifically waives any right to withdraw it except as follows: Bidders/Proposers will be given permission to withdraw any bid/proposal after it has been deposited with JETS provided the bidder/proposer makes a request in writing on company letterhead. This letter will need to be notarized, sealed, and labeled “BID WITHDRAWAL” before being accepted. The request must be submitted 24 hours before the time fixed for bid/proposal due date. Requests pertaining to withdrawals by telephone, fax or email will not be accepted under any circumstance. Each request must reach the Purchasing Department Supervisor for the City of Jonesboro as designated in the solicitation, no later than 24 hours prior to the time fixed for submission of bids/proposals.

No bidder/proposer may withdraw his bid/proposal within 90 days after the date fixed for submission unless this is deemed to be in JETS best interest.

**4.0 Safeguarding Sealed Bids/Proposals** – After receiving all sealed bids/proposals they will be secured by the Purchasing Agent for the City of Jonesboro, and access denied to anyone until the time bids/proposals are due. None of the information contained in them or concerning the number or identity of bidders/proposers shall be made available to the public or to anyone at JETS not having a legitimate interest or need to know.

**5.0 Bid Openings** – At bid openings, sealed bids (IFBs) will be opened and the bid prices read aloud. For procurements in which bidders/proposers are required to submit a Technical Proposal and a separately-sealed Price/Cost Proposal, the Price/Cost Proposal shall remain sealed, and will be placed in a secure location until evaluation of the Technical Proposals is completed. To protect the integrity of the procurement process for proposals, no additional information concerning the contents of a proposal will be released or made available to proposers, potential proposers or the public, until awarded by JETS, Public Service

Committee, City Council, the Mayor, and/or Legal Counsel for the City of Jonesboro, at any conclusion of any unforeseeable protests.

**5.1 Returned Bids/Proposals** – Any bids or proposals received after the date and times specified in the solicitation will be returned to the bidder/proposer unopened.

**6.0 Bid Tabulation** – All bids will be publicly opened at the time and place prescribed in the IFB. When bids are opened, they will be tabulated and retained by the Purchasing Agent until award is recommended, at which time they shall be placed in the contract files.

**7.0 Cost Price Analysis** – JETS is required to perform some form of cost or price analysis in connection with every procurement action, including change orders and options. The method and degree of analysis is dependent on the specs surrounding the particular procurement situation, but as a starting point, JETS must make independent estimates before receiving bids or proposals.

In order to reach a final evaluation that the proposal to be selected includes fair and reasonable cost/prices, it is required that JETS technical support staff submit, simultaneously with the Purchase Requisition and the Statement of Work, an estimate of the work effort in a detailed format to permit comparability to the expected proposals. Such an estimate provides the basis for negotiating the most favorable contract as well as providing assurance that the result is fair and reasonable.

**7.1 Cost Analysis** – This is a more detailed evaluation of the cost elements in the potential contractor's offer to perform. A cost analysis must be developed when the contractor is required to submit the elements (i.e. labor, hours, overhead, materials, time constraints, etc.) of the estimated cost, e.g. under professional consulting, architectural and engineering service contracts. It is conducted to form an opinion as to the degree to which the Contractor's proposed cost actually represents what his or her performance should cost. A cost analysis is generally conducted to determine whether the resources and costs to the contracted project are proper, allowable, and allocable. Cost analysis is a more detailed review of a Contractor's proposal than a price analysis. It involves an in-depth look at the Contractor's cost and pricing data and at the judgmental factors applied in projecting the data to estimated costs. The objective is to form an opinion as to the degree to which the proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

In conducting a cost analysis, it is not enough simply to examine a Contractor's proposed figures on the number of hours his staff will

work, the amounts and costs of materials, and the rates of labor and overhead from accounting records. And, it is not enough to project the actual cost experience and call it the estimate of future costs.

Contract cost analysis is the element-by-element examination of the estimated or actual cost of performing a contract, the analysis of cost accounting data furnished by a Contractor. It involves:

- a. The verification of cost data;
- b. The evaluation of specific cost elements; and
- c. The projection of the cost data to determine its effect on prices.

A cost analysis looks into such factors as:

- a. The necessity for certain costs;
- b. The reasonableness of amounts estimated for necessary costs;
- c. The basis for allocating overhead costs;
- d. Allowances of contingencies;
- e. The appropriateness of allocations of particular overhead costs and the contract; and
- f. The reasonableness of the profit factor.

A cost analysis is performed on *all* negotiated procurement, single bid, option, or change order or where adequate price competition is lacking. It is also appropriate for professional consulting and A&E services contracts when the contractor is required to submit the elements of his estimated cost. Cost analysis is also required when adequate price competition is lacking and for non-competitive procurements, including change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

7.2 Price Analysis – This is an evaluation of the proposed price that does not involve an in-depth evaluation of all the separate cost elements and the profit factors that comprise a potential Contractor's price proposal

Price analysis is a broad term that includes whatever actions the Purchasing Agent, Coordinator of JETS, JETS Accounting Department, and the Contracting Officer takes to reach a decision that the price is fair and reasonable. These actions should include not less than two of the following approaches:

- a. A comparison of competitive price quotations;
- b. A comparison of prior quotations and contract prices with current quotations for the same or similar end-items.
- c. The use of rough yardsticks such as dollar per pound, per horsepower, or other units to point up gross inconsistencies;

- d. A comparison of prices or published price lists issued on a competitive basis, and published market prices of commodities, together with discount or rebate schedules; and
- e. A comparison of proposed prices with independent estimates.

The conclusion that a price is fair and reasonable is based on either a price analysis or combination of price analysis and an analysis supported by discussion of the elements of cost that support the price. Some form of analysis, either price or cost analysis is performed for all procurements over \$500. The person conducting the price or cost analysis is required to document that “the price is fair and reasonable” and the basis for that conclusion. This statement is to be a part of the contract file.<sup>27</sup>

When an item is procured from the original equipment manufacturer (OEM)<sup>28</sup> under non-competitive purchasing procedures the vendor is required to complete a Certificate of Current Cost or Pricing Data Certificate<sup>29</sup>. A Certificate is also required when JETS issues a change order exceeding \$10,000 under non-competitive conditions that are not within the scope of work and not under the terms of the original contract.

With the completion of a Certificate, OEM vendors are required to provide detailed information including specifications, if appropriate, which clearly show that the items being procured are of a proprietary nature. The cost/price analysis includes a statement by the Buyer or the Contract Administrator referencing the Certificate and proprietary rights submitted by the vendor certifying the price paid for such items by like customers and that the item is available only from the original supplier.

<sup>27</sup> This statement will also be included where an ordinance or resolution for purchase requires approval from city council.

<sup>28</sup> An Original Equipment Manufacturer is a company that builds products or components which are used in products sold by another company (often called a value-added reseller, or VAR). An OEM will typically build to order based on designs of the VAR. In some usages, a VAR is sometimes called an OEM, despite this being a complete reversal of the literal meaning of both terms. Some OEMs have also taken on a larger role in the design of the product they are manufacturing. The term **Original Design Manufacturer (ODM)** is used to describe both the companies that design and manufacture a product that is then sold under other brand names.

The practice of utilizing OEMs and VARs falls under the broader category of outsourcing – a popular business strategy which taps into the original manufacturer’s ability to drive cost out of production of the product through manufacturing economies of scale; thereby being able to pass on a more competitive purchase price to the reseller. OEM is a term that predates the computer/electronics industry. It refers to the a subassembly used in the manufacturing of a larger item (e.g. Delphi is the OEM of the climate control system for the Fusion vehicle manufactured by Ford.) [www.en.wikipedia.org](http://www.en.wikipedia.org).

<sup>29</sup> A Certificate of Current Cost or Pricing Data Certificate describes the proposal, quotation, request for price adjustment or other submission information involved in price negotiations according to the Federal Acquisition Regulation (FAR) as required by FAR subsection 15.403-4. This will need to include all cost or pricing data supporting any advance agreements and forward pricing agreements between the Contractor and the Governing party of the proposal.

7.3 Profit – JETS will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

7.4 Cost Plus Percentage of Cost Prohibited – The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

8.0 DBE Evaluation – JETS will evaluate contractors on the responsiveness of their proposal/bids to DBE participation and not their intended responsibility in carrying out the program. Certification of DBE's must be accomplished prior to the time that bids or proposals are due.

DBE participation will be an evaluation criterion in all JETS procurements where a specific goal has been assigned. For procurements in excess of \$10,000 the Bid/Proposal Evaluation Committee will weigh the DBE criterion. For contracts less than \$10,000 in which evaluation criteria are not used, and for which price is the sole determining criterion, the vendor with the lowest and best bid will be awarded the contract or bid with the following exception understood. JETS reserves the right to award a contract under \$10,000 to a certified DBE whose bid/proposal is within 5% of the lowest and best bidder/proposer price and other factors being considered. In the event that identical bids are received, JETS will notify the identical bidder that at least another identical bid was received. JETS will then give the identical bidders the opportunity to revise their bid. In the unlikely event that the revised bids are identical, JETS reserves the right to negotiate until a successful low bidder is reached.

JETS also reserves the right to award a contract, in situations involving a procurement with a particular percentage DBE goal where no bidder/proposer meets or exceeds the goal, to the bidder/proposer with an acceptable DBE participation rate, price and other factors being considered. The determination of the acceptable DBE participation rate shall be made by the DBE officer.

## VII. NEGOTIATIONS

### 1.0 Negotiations –

- a. The person(s) who shall be responsible for negotiations depends upon the nature of the particular procurement. As to all purchases of supplies, services, and/or construction, the Contracting Officer or his/her designee will conduct all negotiations with assistance from the Purchasing Agent, Mayor, Peer Review Board, Construction Manager, and Coordinator of JETS.
- b. All proposers selected to participate in negotiations shall be advised, in writing, of deficiencies in their proposals and shall be offered a reasonable opportunity to correct or resolve the deficiencies and to submit such revisions to their proposals that may result from the discussions. Revisions can include but are not limited to, pricing or cost, technical, and or mechanical. A deficiency is defined as that part of a proposal which will not satisfy JETS requirements.
- c. Discussions shall not disclose the strengths or weaknesses of competing proposers or disclose any information from any proposal which would enable another proposer to improve his proposal as a result thereof.
- d. When options have been included in procurement and negotiations are conducted, negotiations shall also be conducted for the options.
- e. A memorandum summarizing the negotiations shall be included in the contract file.

### 2.0 Exercise of Contract Options

- a. Evaluation of Options – The option quantities or periods contained in the bid proposal must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement.
- b. Exercise of Options
  1. JETS must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
  2. An option may not be exercised unless JETS 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.



## VIII. AWARD

### 1.0 Award Process –

- a. Unless all bid/proposals are rejected, award will be made to the lowest and best bidder/proposer based on the evaluation criteria established in the IFB/RFP. Notice to Proceed will not be issued until City Council and/or other primary legislative bodies (i.e. FTA) awards the Notice to Proceed. All signature approvals and all required documentation have to be obtained before any project can begin.

Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, financial and technical resources and delivery schedule. If the award is to be made to other than the apparent low bidder/proposer, a full justification memorandum must be prepared and put into the contract file.

In the event that identical bids are received, JETS will notify the identical bidder that at least one other identical bid was received. JETS will then give the identical bidders the opportunity to revise the bid. In the unlikely event that the revised bids are identical, JETS reserves the right to negotiate until a successful low bidder is reached.

- b. The City Council or any other primary legislative body is not bound by recommendation of the selection committee staff when they believe their action will further JETS statutory functions; however, the decision of the Council must be consistent with the solicitation documents (IFB/RFP) written evaluation criteria and requirements, and must have a rational basis for the decision which is fully documented by the JETS Department for the procurement file.

2.0 Award of the Contract – Upon award of the contract by the City Council, Purchasing Agent will forward/return bid/proposal bonds to the unsuccessful bidders/proposers. The Purchasing Department will notify all the successful and unsuccessful bidders/proposers in writing. Bid/Proposal bonds submitted by the successful bidder/proposer will be retained by the Purchasing Department. The Purchasing Department will prepare the contract to be mailed in triplicate to the successful bidder/proposer. When it is returned, along with the performance bond and certificate of insurance, if required, the Purchasing Agent for the City of Jonesboro will obtain the appropriate signatures of the Mayor, the Legal Counsel for the City of Jonesboro, and the Coordinator of JETS, if required. Two copies will be retained along with the bid/proposal bond (for the Purchasing Agent and contract files). The third will be returned to the vendor.

3.0 Required Federal Clauses – If any exceptions to the proposed contract contained in the solicitation document were made, the Legal Counsel for the City of Jonesboro will review the draft contract before submitting it to the

vendor to assure that the revised contract is acceptable and all the applicable federal, state, and local clauses are included. These would include, but not be limited to Civil Rights, DBE, Buy America, Lobbying, Debarment, Brooks Act, and Davis-Bacon Act. The Purchasing Agent will also assure that where required the proper certifications are included and signed.

**4.0 Protest Procedures** – Protest may be made by prospective Bidders or Proposers whose direct economic interest would be affected by the award of a Contract or by failure to award a Contract. JETS will consider all protest requested in a timely manner regarding the award of a Contract, whether submitted before or after an award. All protests are to be submitted in writing to the Purchasing Agent for the City of Jonesboro, City Hall, 515 W. West, Washington, Jonesboro, AR 72401. Protest submissions should be concise, logically arranged, and clearly state the grounds for the protest. Protest must include at least the following information:

- a. Name, address, and telephone number of protestor
- b. Identification of the solicitation or Contract number
- c. A detailed statement of the legal and factual grounds for the protest, including copies of relevant documents
- d. A statement as to what relief is requested

Protest must be submitted to JETS in accordance with these procedures within 30 days of bid approval/award. Protest must be complete and contain all issues that the protestor believes relevant.

**4.1 Protests Before Bid Opening** – Bid protests alleging restrictive specifications or improprieties which are apparent prior to bid opening or receipt of proposals must be submitted in writing to the Purchasing Agent and must be received seven (7) days prior to bid opening or closing date for receipt of Bids or Proposals. If the written protest is not received by the time specified, Bids or Proposals may be received and award may be made in the normal manner unless the Purchasing Agent determines that remedial action is required. Oral protest not followed up by a written protest will be disregarded. The Purchasing Agent may request additional information from the appealing party and information or a response from other Bidders, which shall likewise be submitted in writing to the Purchasing Agent no later than 10 days from the date of JETS request. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Bidders; all parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by JETS that such party either does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response; and, in such event the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation deemed

appropriate by JETS, the Purchasing Agent shall either (a) render a decision, or (b) at the sole election of the Purchasing Agent, conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Purchasing Agent shall render a decision which shall be final and advise all interested parties thereof in writing, but no later than 10 days from the date of the informal hearing.

4.2 Protests After Bid Opening/Prior to Award – Bid protests against the making of an award must be submitted in writing to the Purchasing Department and received within seven (7) days prior to award by the JETS Board. The process for resolving protest, listed above in Section 4.1, will be followed for any protest received under this section subject to any current or future federal, state or local regulations which take precedence over the above provisions.

Notice of the protest and the basis therefore will be given to all prospective Bidders or Proposers. In addition, when a protest against the making of an award is received and it is determined to withhold the award pending disposition of the protest, the Bidders or Proposers whose Bids or Proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or withdraw the Bid or Proposal.

Where a written protest against the making of an award is received in the time specified, award will not be made prior to seven (7) days after resolution of the protest unless JETS determines that:

- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make award promptly; or
- c. Failure to make award will otherwise cause undue harm to JETS or the Federal Government.

4.3 Protests-No Bid (Private Enterprise Participation) – In accordance with FTA Circular 7005.1, JETS may from time to time, after considering the option of privatization, decide to operate a new or restructured service “in-house”. FTA Circular 7005.1 does not require JETS to solicit bids for the new service; however, if it elects to operate the service in-house without soliciting competitive bids, JETS must be prepared to process complaints from the private sector for its decision to “no-bid” and provide a procedure for doing so.

For protests filed in “no-bid” situations, the firm or individual wishing to file a protest will have seven (7) days to do so from the date of the City Council meeting approving the operation of the new service in-house. Oral protests not followed up by a written protest, will be disregarded. The process for resolving protests listed above in Section 4.1 will be followed for any protest received under this section, subject to any current or future federal, state or local regulations which take precedence over the above provisions.

- 4.4 *Protests After Award* – Protests made after contract award shall be received no later than seven (7) calendar days after award. Protests received after award will be reviewed by the Purchasing Department and, if necessary, the City of Jonesboro Legal Counsel. In instances where the award has been made, the Contractor shall be furnished with the notice of the protest and the basis thereof. If the Contractor has not executed the Contract as of the date the protest is received by JETS, the execution of the Contract will not be made prior to seven (7) days after the resolution of the protest unless JETS determines that:
- a. The items to be procured are urgently required;
  - b. Delivery or performance will be unduly delayed by failure to make award promptly; or
  - c. Failure to make award will otherwise cause undue harm to JETS or the Federal Government.

The process for resolving protests listed above in preceding Section 4.1 will be followed for any protest received under this section, subject to any current or future federal, state or local regulations which take precedence over the above provisions.

- 4.5 *Appeals* – Appeals and requests for reconsideration of the determination of the City Council concerning protests must be submitted to the Mayor and the Purchasing Department and received within seven (7) days after the date of the written determination by the Purchasing Agent. The Mayor may request additional information from the appealing party and information or a response from other Bidders/Proposers, which shall likewise be submitted in writing to the Mayor and the Purchasing Department. So far as practicable, appeals will be decided upon the basis of the written appeal, information, and written response submitted by the appealing party and other Bidder/Proposers. All parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by JETS that such party does not desire to participate in the proceedings, and does not contest the matter, or does not desire to submit a response; and, in such event, the appeal will proceed and will not be delayed due to the lack of response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by JETS, the Mayor shall

either (a) render a decision, or (b) at the sole election of the Mayor conduct an informal hearing at which the interested participating parties will be afforded an opportunity to present their respective positions and facts, documents, justifications, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, the Mayor shall render a decision, which shall be final and advise all interested parties thereof in writing by no later than 10 days from the date of the informal hearing.

**4.6** Protests to Federal Transit Administration – Under certain limited circumstances, an interested party may protest to FTA the award of a Contract pursuant to an FTA grant. FTA's review of any protest will be limited to:

- a. Alleged failure by JETS to have written protest procedures or alleged to follow such procedures.
- b. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure which shall be submitted and processed in accordance with that Federal regulation.

Protestors shall file a protest with FTA not later than five working days after a final decision of the Mayor is rendered under the JETS protest procedure. In instances where the protestor alleges that JETS failed to make a final determination of the protest, the protestor shall file a complaint with the FTA no later than five Federal working days after the protestor knew or should have known of JETS failure to render a final determination on the protest.

**4.7** Submission of Protest to FTA –

- a. Protest shall be filed with the appropriate FTA Regional Office with concurrent copy to JETS.

Federal Transportation Administration  
819 Taylor Street  
Room 8A36  
Fort Worth, TX 76102  
(817) 978-0550 telephone  
(817) 978-0575 fax

- b. The protest filed with the FTA shall:
  1. Include the name and address of the protestor
  2. Identify JETS project number and the number of the Contract solicitation.
  3. Contain a statement of the grounds for the protest and any supporting documentation. This should detail the alleged

failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible.

4. Include a copy of the local protest filed with JETS and a copy of the JETS decision, if any.

**4.8** *Internal Conflict of Interest Procedures-* In order to ensure that appropriate conflict of interest measures are implemented, the Purchasing Agent shall promptly inform the Mayor, upon receipt of all bid/proposal protests, of the identity of the protesting party and all other interested parties, the procurement action which is the subject of the protest, and the general nature of the protest. The purpose of this information is to enable the Mayor to properly recuse himself and to initiate institutional conflict of interest procedures in appropriate instances. In all such instance, the Purchasing Agent consult with all involving parties after submitting his/her initial report to the Mayor.

THIRD DRAFT

## **IX. CONTRACT ADMINISTRATION**

**1.0 Project Management** – The Coordinator of JETS, based upon consultation with the Purchasing Department and the Mayor, shall designate a Project Manager for all planning or capital procurement in excess of \$25,000. This Project Manager can be from an Internal Source such as a City of Jonesboro employee or an external source such as a Consultant Firm. If the project is a construction project and/or will occur over a period of time, a Technical Representative may be designated by the Mayor and/or City Council. It shall be the Project Manager's responsibility to monitor the Contractor throughout the work process. Generally, the Statement of Work in the negotiated contract defines specific tasks, milestones, and review procedures which vary depending on the specific project. The Project Manager shall provide technical direction to the Contractor and respond to correspondence on technical matters from the Contractor's designated representative. A copy of all correspondence shall be provided to the JETS department and the Purchasing Agent for the City of Jonesboro. The Project Manager shall review the progress of the work on a periodic basis and initiate review by JETS staff, Community Transportation Board, public agencies and affected utilities as required.

The Contractor is required to document the amount of time and money spent on the work on a period basis specified in the Contract. The Project Manager shall review the Contractor's documentation and invoices in relation to the milestones, work expended to date, and budgeting information. The Project Manager shall advise the Mayor, City Council, the Purchasing Agent, and the Coordinator of JETS if the Contractor is not in compliance with the contract. The aforementioned group shall take appropriate actions to correct this situation. The Project Manager shall also review invoices for accuracy and content and then process the invoices for payment in accordance with Contract Terms and Conditions.

**2.0 Contract Amendments and Change Orders** – Change Orders are, in effect, amendments to a contract and may require periodically adjusting a contract amount or performance period due to unanticipated conditions. Change Orders are considered a non-competitive procurement and as such are subject to the same requirements as noted in Section IV, 4.8. The Purchasing Agent, Contract Officer, Mayor, or his designee(s) have the authority to authorize expenditures for extra work without the necessity of advertising for bids, provided that the cost for the extra work does not exceed \$50,000 or 10% of the original contract, whichever is greater. All Change Orders must be processed through the Purchasing Department with supporting documentation. Prior to issuing any change order, the Grants Administrator and Accounting Department shall be informed, so that a determination can be made as to the availability of funds. The Contracting Officer shall also be contacted to determine if the proposed change in the order contains a change in scope which may be grounds for bidding the extra work. If over \$50,000 or 10% of the original contract amount,

the Mayor must review and recommend for the change to be approved. The JETS Board along with the City Council must be given an opportunity to view the change and determine whether this change meets with their approval. All Change Orders must be signed by the Contracting Officer and, if necessary, reviewed and approved by Legal Counsel for the City of Jonesboro and Grants Administrator for the FTA.

A cost analysis must be performed, unless price reasonableness can be established based on the basis of catalog or written/printed market price of a commercial product or on the basis of prices set by law or regulation. Change Orders must address DBE participation.

Change Orders must be prepared in triplicate. Two copies will be retained for Purchasing and JETS. The third will be returned to the Contractor. The adjustments may be in the form of a credit (adjusting the total cost downward due to unanticipated savings), or in the form of an increase (adjusting the contract amount upward due to extra work), or in the form of a zero dollar change. Change Orders must also address if the change will affect the time required for the project. Change Orders are prepared by the Contract Administrator.

*2.1 General* – If in the course of the work, it becomes apparent that a change in the Statement of Work is required, the Project Manager will initiate a request to the Contracting Officer for a Change Order, explaining why it is necessary and could not have been anticipated by the contractor. The Project Manager will also provide a cost and price analysis of the proposed changes, and if applicable, any changes to the schedule, and provide changes to the statement of Work and required documentation to the Contracting Officer. The Project Manager will notify the Grants Administrator (FTA) to determine if the Change Order can be funded prior to signing any changes. The Statement of Work, change in schedule, and cost of the change, if any, are to be negotiated with the Contractor by the Contracting Officer before the Change Order is processed in accordance with procedures and delegation of authority. The Project Manager has a continuing responsibility to monitor the Contractor's work progress until it is completed and the product or service is accepted by JETS. The Project Manager must notify the Contracting Officer when the work is completed.

*2.2 Construction* – JETS will solicit the use of a consultant for the construction projects designated as the Construction Manager. The Construction Manager will normally be appointed as the COTR (Contracting Officer's Technical Representative). For technical matters, the Construction Manager/COTR works for the JETS Project Manager under the City of Jonesboro umbrella. However, the Construction



Manager does have obligations to the JETS Contracting Officer as will be defined in the letter of appointment

Construction changes will normally be originated from the Contractor, the Construction Manager or the design consultant. The Construction Manager will prepare a request for a Change Order and forward it to the JETS Project Manager. This request will define the scope of and reason for the change, with an order of magnitude estimated cost, and if applicable, the change to the schedule.

The Project Manager will consult with parties having knowledge of or interest in the contract. This consultation may take the form of a Change Order Review Committee which meets on an as-needed basis. This pending change will be reviewed to determine that it is not already a contract requirement, that it is really needed and the scope reflects only the need. After a favorable determination, the Construction Manager, Project Manager and Mayor will approve the pending change with the concurrence of the Contracting Officer. A copy will be forwarded to the Construction Manager who will then issue a Request for Proposal. For emergencies, this review will be after the fact and a ratification of the previous verbal actions.

When the Contractor's proposal, the estimate, and the schedule are in hand, the Construction Manager in conjunction with the Project Manager, will develop JETS negotiation position and schedule negotiations with the contractor utilizing the assistance of the Purchasing Agent as required. Negotiations will be conducted with the contractor and documented. If negotiations are not successful, a Change Order will be prepared and executed by both parties. All Change Orders will be executed by the Purchasing Department or the Purchasing Agent for the City of Jonesboro. The cumulative value of all changes for a contract may not exceed \$50,000 or 10% of the original award amount, whichever is greater, without JETS Board approval. A copy of all executed Change Orders shall be forwarded to the Grants Administrator, the Mayor and the JETS Department.

The Change Order file shall contain the executed order, reason/scope of change, record of negotiations, contractor's proposal, estimate and schedule as appropriate and all approval documentation. The debit (or credit if the change is a deductive change order) to project contingency will be changed to the actual value as will the credit (or debit) to contract price.

### 3.0 File Administration –

3.1 Contract Files – Orderly documentation of the entire procurement process is essential to support sound procurement practices. It will be the responsibility of the Contracting Officer to periodically review procurement files and assure that proper documentation is being maintained. All contract files are centralized under lock and key, and numerically coded. To insure that all pertinent and required documentation is contained within a standardized filing system, at a minimum, the following documentation will be incorporated in the contract file:

- a. Purchase Requisition
- b. Draft Solicitation Document and Schedule with Approvals
- c. Legal Notice to Bidders/Proposers
- d. Solicitation Document with all Addendum
- e. Technical Specifications and Plans
- f. Bid/Proposal Requirements and Conditions
- g. Copy of General Contract Provisions
- h. Requests for Approved Equals or Clarifications and JETS Responses
- i. Bid/Proposals and Summary of Bid/Proposal Evaluation
- j. City Council Resolution
- k. Copy of Executed Contract
- l. Bid/Proposal Bond and Performance Bond Data
- m. Change Orders
- n. All Closeout Documents

These records will also include internal documentation of the procurement history which at a minimum describes:

- a. Rationale for the Method of Procurement
- b. Selection of Contract Type
- c. Contractor Selection or Rejection
- d. Basis for Contract Price (Cost/Price Analysis)
- e. Summary of Negotiations and Approvals

3.2 Construction Contract Files – Construction Contract (RFP/IFB) Files shall include the items listed in Section 3.1 above including the following:

- a. Weekly Payroll Sheets as Required by the Davis-Bacon Act
- b. Release of Liens, Materials, and Payment Bonds, etc.
- c. Insurance Document
- d. Pending Change Orders
- e. Approved Change Orders

- f. As-Built Drawings
- g. Warranties
- h. Building Permits
- i. Inspection Sheets Approved/Denied

**4.0 Contract Closeout Procedures** – Prior to the contract completion date, the Contracting Officer shall contact the Project Manager to confirm that all contracted equipment, services and/or supplies have been delivered in an acceptable manner, that the Contractor has complied with all clauses of the Contract, and that no Contractor effort will be required after the specified Contract completion date and that the Contract may be closed out after the initial inspection. This action shall be initiated at least 60 days prior to the specified completion date, whenever possible. This is necessary to determine whether there will be an overrun; to negotiate and extend the period of performance, if necessary; and, to allow sufficient procurement lead time if there is a follow-up effort. If the Contract is to be completed on schedule, the Purchasing Department in conjunction with the Project Manager shall proceed with the Contract closure; otherwise, appropriate action shall be taken to extend the Contract.

Upon completion of the work under the Contract, the Purchasing Agent shall send the "Contractor's Closeout Letter" to the Contractor. This letter contains the necessary forms for requesting assignment of rebates and credits, release of liability, and Contractor's closing statement if appropriate.

Upon return of the Contractor's closing documentation, the Contract Administrator (which in this case would be the Purchasing Agent for the City of Jonesboro) shall review the documents for completeness and, if applicable, complete the closeout utilizing JETS closeout checklist. The Grant Administrator shall also initiate grant closeout with the FTA, AHTD, and other federal and state agencies, as applicable. If the documents are not accepted, the Contract Administrator shall follow-up with the Contractor and obtain the information required.

Cost and/or fees withheld pursuant to the Contract provisions shall not be released to the Contractor until the Contractor has completed the required closing documents, made final disposition of JETS property, and reached final agreement with JETS regarding the amount of final payment due. Withheld costs, fees, and retainers shall be included in the final payment to the Contractor.

As to all routine contract supplies, materials and non-professional services, upon receipt of the Project Manager's confirmation of a pending contract completion, the Contracting Officer shall determine whether a final contract audit is required. A memorandum outlining the contract particulars and status shall be sent to the Grants Administrator for assistance in making the

determination. If an audit is required, the Contracting Officer shall submit a recommendation to the Mayor, Legal Counsel, Purchasing Agent, Planning Manager for Capital Projects and/or City Council as to the need for a final contract audit and shall implement the decision of the Mayor and/or City Council.

Professional Services contract closeout will occur upon acceptance and completion of all services. The Contract Administrator is responsible for insuring that contract files are closed in a timely manner and closeout actions are documented in details as appropriate. Upon completion of the closeout checklist, the contract file shall be reviewed and certified as complete by the Contract Administrator.

**5.0 Contract Termination** – The performance of work under a contract may be terminated in part or in whole when the City of Jonesboro City Council (as to contracts awarded by the Council) or the Mayor (as to all other procurements), in consultation with the Contracting Officer and/or the Purchasing Agent and, if necessary, the Legal Counsel for the City of Jonesboro, determines that such termination is in the best interest of JETS. Contracts may be terminated for convenience; i.e. a reduced need or in the best interest of JETS, or for default; i.e. the Contractor failed to perform in accordance with the contractual requirements.

When the decision to terminate a contract is made, a “Notice of Termination” shall be sent by the Contracting Officer (as to contracts awarded by the City Council) or the Purchasing Agent and/or Mayor (as to all procurements) to the Contractor. The Notice of Termination shall specify the reason for the termination, the extent to which the performance of work is terminated; i.e. in whole or in part, and the day upon which such termination is effective.

After issuance of a Notice of Termination pursuant to the Termination/Default Article(s) of Contract, settlement of claims, etc. shall be accomplished as soon as possible to protect the interests of and minimize the liability of JETS.

**Disputes** – In spite of making the contract documents as clear as is possible, there might be differences in interpretations as to what may or may not be included in the contract. The objective of the disputes resolution is for a prompt agreement as to the merit, and if merited, the quantum of the claim.

**6.1 Construction projects** – The Contractor will present a claim from which there may be a dispute to the Construction Manager. If such a claim is submitted to any other official, either JETS or consultant, it will be directed to the Construction Manager.

The Construction Manager will review the claim, obtain additional information from the Contractor as required, consult with the Contract Administrator and make a recommendation as to the merit of the claim.

If the Construction Manager believes there is merit, even partial, the fact will be provided to the Contract Administrator. The Contract Administrator will prepare a Memorandum of Merit, which shall be coordinated with the Project Manager. This document will be placed in contract file. It becomes the basis for a Change Order. From this point on, there is no dispute.

If the Construction Manager believes that there is no merit, then that individual will formally respond to the Contractor to that effect. In the letter, the Contractor will be advised of the right to appeal to the Contracting Officer as provided in the Disputes clause. The Construction Manager will transmit all the facts to the Contracting Officer.

6.2 Other Projects – Non-construction projects shall follow the same procedure as construction projects, but instead of the Construction Manager receiving and investigating the claim, the Project Manager will.

6.3 Final Decision – The Contractor may appeal to the Contracting Officer under the terms of the Disputes clause. The Contracting Officer may consult with the Construction Manager, if one has been appointed, and/or the Project Manager. The Contracting Officer shall review all the facts of the claim and have prepared a Contracting Officer's Final Decision provided there is a determination of no merit. Should partial merit be recognized, this will be documented and an attempt to settle that portion of the claim shall be made. The Contracting Officer's Final Decision shall state the facts and rationale for the decision. It shall also advise the Contractor that an appeal may be made to the Mayor within 10 days.

The decision of the Contracting Officer shall be final and conclusive unless, within 10 days from the receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Mayor and Coordinator of JETS. The Mayor, Legal Counsel, and Purchasing Agent shall review the dispute, related documents and the Contracting Officer's Final Decision. The Mayor may consult with the Construction Manager, Project Manager, and the Contracting Officer. The decision of the Mayor shall be final and conclusive unless, within 10 days from the date of the receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to JETS and the City Council of Jonesboro. The decision of the Council, or its duly authorized representative, for the determination of such appeals shall be final and conclusive, unless in proceedings initiated by either party for review of such decision in a court of competent jurisdiction, the Court determines the decision to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by

substantial evidence. In connection with any appeal proceeding under this Section, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his/her appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision.

**7.0** **Contract Administration-DBE** – The Project Manager and the Contract Administrator shall review Contractor invoices to assure that the Contractor's proposed DBE participation levels, accepted by JETS, are being met. Further, JETS will require the Contractor to report its payment of DBE invoices in each reporting period. DBE participation by the Contractor will be defined and measured by the total amount of the contract, including change orders.

If there is slippage on DBE participation, based on the Contractor's proposed work plan, the Project Manager will notify the Contractor and ask his/her to justify the slippage in a written report to the Project Manager and also to provide a written action plan to bring the Contractor back into compliance with its work plan. If slippage continues, the Project Manager shall notify the JETS Contract Administrator, the DBE Liaison, and the Contracting Officer to determine what corrective actions are appropriate. The DBE Liaison shall maintain a journal of DBE contracts awarded for each fiscal year and shall also track the actual DBE billings and DBE payments by contract, if any.

THIRD DRAFT