

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING ON THE PROPOSED RULE WILL BE HELD DURING ITS NEXT REGULARLY SCHEDULED PUBLIC MEETING.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE AND ECONOMIC STATEMENT IS: James Antista, General Counsel, Florida Game and Fresh Water Fish Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600

THE FULL TEXT OF THE PROPOSED RULE IS:

**68A-28.002 Florida Waterfowl Stamp Design Contest.**

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 7-1-84, Formerly 39-28.02, Amended 6-15-87, 8-18-88, 4-11-90, 4-14-92, 7-1-94, Formerly 39-28.002, Repealed.

NAME OF PERSON ORIGINATING PROPOSED RULE: Thomas J. Wright

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Dr. Allan L. Egbert, Executive Director

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 24, 2000

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: April 28, 2000

**FISH AND WILDLIFE CONSERVATION COMMISSION**

**Freshwater Fish and Wildlife**

RULE TITLE: Florida Wild Turkey Stamp Design Contest RULE NO.: 68A-28.003

PURPOSE AND EFFECT: The purpose of this rule change is to delete the rule. The result should cause no adverse effect to the participants since the language contained in the rule will be provided in the packets mailed to the participants each year.

SUMMARY: The language contained in this rule provides instruction and direction to the participants of the contest. This change eliminates costs associated with administrative changes through a rule process and allows flexibility in the future.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: None.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: Art. IV, Sec. 9, Fla. Const.

LAW IMPLEMENTED: Art. IV, Sec. 9, Fla. Const.

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**Section III  
Notices of Changes, Corrections and  
Withdrawals**

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Division of Animal Industry**

RULE CHAPTER NO.:	RULE CHAPTER TITLE:
5C-26	Disease Vector Control
RULE NOS.:	RULE TITLES:
5C-26.001	Definitions
5C-26.002	Restrictions on Importation of Animals
5C-26.003	Animals from Outside the Continental United States Where a Foreign Animal Disease or Vector is Present
5C-26.004	Materials

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above rule, as noticed in the Florida Administrative Weekly, Vol. 26, No. 10, dated March 10, 2000, and changes noticed in Vol. 26, No. 15, dated April 14, 2000, has been withdrawn.

**REGIONAL TRANSPORTATION AUTHORITIES****Tri-County Commuter Rail Authority**

<b>RULE NOS.:</b>	<b>RULE TITLES:</b>
30C-2.001	General Provisions
30C-2.002	Organization
30C-2.0021	Definitions
30C-2.003	Source Selection and Contract Formation and Administration
30C-2.009	Debarment and Suspension Procedures
30C-2.010	Vendor Protest Procedures
30C-2.011	Solicitation or Awards in Violation of Law or Rules and Regulations

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rules in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 26, No. 4, January 28, 2000, issue of the Florida Administrative Weekly.

**30C-2.001 General Provisions.**

(1)(a) Promulgation: Pursuant to the authority granted by the Legislature which enacted Chapter 343, F.S. (1989) creating the Tri-County Commuter Rail Authority, an agency of the State of Florida, the procurement rules and regulations set forth herein have been promulgated and approved by the Board of the Tri-County Commuter Rail Authority (hereinafter the "TCRA").

(b) Short Title: These rules and regulations shall be known and may be cited as the "Procurement Code of the Tri-County Commuter Rail Authority."

**(2) Purposes, Rules of Construction.**

(a) Interpretation: This Code shall be construed and applied to promote its underlying purposes and policies.

(b) Purposes and Policies: The underlying purposes of this Code are to provide the TCRA a unified purchasing system, with centralized responsibility allowing for the processing of some work by delegation. This Code simplifies, clarifies, and modernizes the rules and regulations governing the procurement of the TCRA while allowing the continued development of procurement policies and practices. This Code provides for increased economy in procurement activities, and enables the TCRA to maximize to the fullest extent practicable, the purchasing value of public funds by fostering effective broad based competition within the free enterprise system, while ensuring fair and equitable treatment of all persons who deal with TCRA. This Code provide safeguards for the maintenance of the quality and integrity of procurement by the TCRA. It is also intended to provide for increased public confidence in the procedures followed by public procurement.

(3) Supplementary General Principles of Law Applicable: The principles of law and equity, including laws relative to ethics, and laws relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement the provisions of this Code.

(4) Requirement of Good Faith: This Code requires all parties involved in the negotiation, development, performance, or administration of TCRA contracts to act in good faith.

(5) Open Competition Required: 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) Non competitive pricing practices between firms or between affiliated companies;

(d) Noncompetitive award 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 TCRA; 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 salient characteristics and not allowing an equal product to be offered; and

(g) Any arbitrary action in the procurement process.

**(6) Application of This Code.**

(a) General Application: This Code applies only to contracts solicited or entered into after the effective date of this Code unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

(b) Application to Procurement: This Code shall apply to every procurement of the TCRA irrespective of the source of the funds, including federal assistance monies, except as otherwise specified in Section 8 of this Rule; except that this Code shall not apply to either grants or contracts between the TCRA and other governments. It shall also apply to the disposal of TCRA supplies. Nothing in this Code shall prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(c) Revenue Contracts: This Code applies to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing a Federal Transit Administration-funded asset.

(7) Determinations. Written determinations required by this Code shall be retained in the appropriate official contract file of the Contracts Administration and Procurement Department.

(8) Exemptions: The procurement of the following supplies and services are exempted from this Code:

(a) Real property, abstract of titles for real property, title insurance for real property, and other related costs of acquisition of real property. The acquisition of real property utilizing Federal Transit Administration funds must comply with all Federal requirements governing such acquisition.

(b) Purchase between governments and/or nonprofit organizations.

(c) Dues and memberships.

(d) Subscriptions.

(e) Legal services.

(9) Joint Participation Agreements with the Florida Department of Transportation (the "Department").

(a) Except as otherwise authorized in writing by the Florida Department of Transportation, the TCRA shall not execute any contract or obligate itself in any manner requiring the disbursement of Department joint participation funds, including consultant or construction contracts or amendments thereto, with any third party with respect to a TCRA project without the written concurrence of the Department. ~~Failure to obtain such concurrence shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.~~

(b) Any purchases of capital equipment or expenditure for the construction and equipping of facilities which require the disbursement of the Department's funds, shall be submitted for written approval by the Department with all appropriate plans and specifications covering the project.

(c) A TCRA contract requiring the disbursement of Department funds is considered approved if:

1. The Department's representative on the TCRA Board is present when the contract is approved and votes for contract approval or does not vote.

2. The Department's representative on the TCRA Board is not present when the contract is approved, and does not object to the approval of the agenda item of the Board by submitting a written objection.

(10) Interlocal Financing Agreements: All contracts entered into by the TCRA shall conform to the specific requirements mandated by Interlocal Financing Agreements entered into by the TCRA, the Florida Department of Transportation, and Dade, Broward and Palm Beach Counties.

(11) Law and Grant Requirements: In any situation where compliance with this Code will place the TCRA in conflict with state or federal law or the terms of any grant, the TCRA shall comply with such federal or state law, grant requirements,

or authorized regulations which are mandatorily applicable and which are either not reflected in this Code or are contrary to provisions of this Code.

(12) Standards of Conduct and Conflict of Interest Policies.

(a) TCRA Board members and staff of TCRA shall be governed by the policy of the State of Florida set forth in Section 112.311 of the Florida Statutes.

(b) TCRA Board members and staff of TCRA shall be governed by the appropriate standards of conduct set forth in Section 112.313 of the Florida Statutes.

(c) TCRA Board members shall be governed by the appropriate provisions of Section 112.3143 of the Florida Statutes governing voting conflicts.

(d) TCRA Board members and staff of TCRA shall be governed by the appropriate provisions of Section 112.3144 of the Florida Statutes governing full and public disclosure of financial interests.

(e) TCRA Board members and staff of TCRA shall be governed by the appropriate provisions of Section 112.3148 governing reporting and prohibited receipt of certain gifts by procurement employees.

(f) Staff of TCRA shall be governed by the appropriate provisions of Section 112.3185 concerning contractual services.

(g) TCRA Board members and staff of TCRA shall be governed by the penalty provisions of Section 112.317 of the Florida Statutes for any violation of the statutory provisions listed above.

Specific Authority ~~420.52(1)(b)~~, 343.54(1)(b),(3)(i) FS. Law Implemented 343.54(3)(d),(e),(i),(k),(m),(n),(p) FS. History--New 7-5-95, Amended

### 30C-2.002 Organization.

(1) Authority of TCRA Board. Except as otherwise provided in this Code, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction are vested in or exercised by the Board of the Tri-County Commuter Rail Agency.

(2) Approval Authority for Procurement Actions and Contracts

(a) The TCRA Board must approve the following:

1. All engineering or construction services contracts, task orders and work orders of over \$100,000.

2. All other contracts, task orders and work orders of over \$25,000.

3. Single change orders to engineering or construction services contracts approved by the Board with a value of more than \$100,000 or over 10% of the value of the contract, whichever is less.

4. Single change orders to all other contracts approved by the Board with a value of more than \$25,000 or over 10% of the value of the contract, whichever is less.

5. All additional change orders to engineering or construction services contracts approved by the Board after the accumulation of change orders with a total value of more than \$100,000 or over 10% of the value of the contract, whichever is less.

6. All additional change orders to all other contracts approved by the Board after the accumulation of change orders with a total value of more than \$25,000 or over 10% of the value of the contract, whichever is less.

7. Single change orders to engineering or construction services contracts approved by the Executive Director with a value of more than \$10,000; and all additional change orders to engineering or construction services contracts approved by the Executive Director after the accumulation of change orders with a total value of more than \$10,000.

8. Single change orders to all other contracts approved by the Executive Director with a value of more than \$2,500; and all additional change orders to contracts approved by the Executive Director after the accumulation of change orders with a total value of more than \$2,500.

(b) The Executive Director must approve the following:

1. All engineering or construction services contracts, task orders and work orders of less than or equal to \$100,000.

2. All other contracts, task orders and work orders of over \$10,000 and less than or equal to \$25,000.

3. Single change orders to engineering or construction services contracts approved by the Board with a value of up to \$100,000 or up to 10% of the value of the contract, whichever is less.

4. Single change orders to all other contracts approved by the Board with a value of up to \$25,000 or up to 10% of the value of the contract, whichever is less.

5. Cumulative change orders to engineering or construction services contracts approved by the Board with a value of up to \$100,000 or up to 10% of the value of the contract, whichever is less.

6. Cumulative change orders to all other contracts approved by the Board with a value of up to \$25,000 or up to 10% of the value of the contract, whichever is less.

7. Single change orders to engineering or construction services contracts approved by the Executive Director with a value of up to \$10,000; and all additional change orders to engineering or construction services contracts approved by the Executive Director after the accumulation of change orders with a total value of up to \$10,000.

8. Single change orders to all other contracts approved by the Executive Director with a value of up to \$2,500; and all additional change orders to contracts approved by the Executive Director after the accumulation of change orders with a total value of up to \$2,500.

9. Single change orders to contracts approved by the Director of Contract Administration and Procurement of over 10% of the value of the contract; and all additional change

orders to contracts approved by the Director of Contract Administration and Procurement after the accumulation of change orders with a total value of more than 10% of the value of the contract.

10. All contracts for professional services and for the purchase of computer, communications and electronic equipment of \$25,000 or less.

(c) Except as provided in subsection (b)(10), the Director of Contracts Administration and Procurement must approve the following:

1. All contracts, work orders and task orders of \$10,000 or less, and all Micro-Purchases.

2. Change orders to contracts approved by the Director of Contract Administration and Procurement with a value of 10% or less of the contract.

(3) Delegation of Authority to Executive Director: Except as otherwise provided in this Code, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction vested in the TCRA Board are hereby delegated to the Executive Director of the TCRA. The Executive Director is specifically authorized to delegate the approval authority set forth in subsection (2)(b) of this Rule to the Deputy Executive Director.

(4) Specific Authority of the Executive Director.

(a) The Executive Director shall promulgate and issue Procurement Procedures to implement and augment the provisions of this Code subject to approval by the Board.

~~(b) The Executive Director shall promulgate and issue a Quality Assurance/Quality Control (QA/QC) Handbook.~~

~~(b)(e)~~ The Executive Director is authorized to ~~may either~~ participate in, sponsor, conduct, or administer agreements with one or more public procurement units for the procurement of any supplies, services, or construction with one or more public procurement units (i.e., any City, Town, and any other subdivision of the state located within Dade, Broward and Palm Beach counties or a public agency of any such subdivision, public authority, educational, health, or any other institution, and any other entity which expends public funds for the procurement of supplies, services, and construction). Such ~~will may~~ include ~~but is not limited to~~ joint or multiple party contracts between public procurement units and open-end contracts which are made available to public procurement units. The actual award shall be made by the TCRA through a contract entered into by TCRA and the contractor.

~~(c)(d)~~ The Executive Director is expressly authorized to purchase from contracts generated by the State of Florida as well as units of the Federal Government as permitted by Federal law and regulation. Such purchases are to be in accordance with the terms and conditions of the contract between TCRA and the contractor.

~~(d)(e)~~ The Executive Director may sell to, acquire from, or use any supplies or services belonging to a local public procurement unit or external procurement activity with the

award made by the TCRA through a contract between TCRA and the local public procurement unit or an external contractor. Where a local public procurement unit or external procurement activity administer a cooperative purchase activity complying with the general requirements of this Code, TCRA's participation in such a purchase shall be deemed to have complied with this Code. Any controversies concerning the award or procession of a contract which has been entered into on a cooperative basis shall be remedied under the rules and regulations of the entity advertising the contract.

~~(e)(f)~~ The Executive Director shall have the authority to enter into a procurement unit agree to such an award of their contract and the procurement was accomplished under an open and free competitive bid system. The actual award of such a contract shall be made under the provisions contained in this Procurement Code for the award of contracts by the TCRA, and TCRA shall enter into a contract with the vendor.

(5) Delegation of Authority to Director of Contract Administration and Procurement.

Except as other wise provided in this Code, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction vested in the Executive Director of the TCRA are hereby delegated to the Director of Contract Administration and Procurement as more fully set out in Section 6. below.

(6) Specific Authority of the Director of Contract Administration and Procurement.

(a) Contracting Officer. The Director of Contract Administration and Procurement (hereinafter "Director") serves as the Principal Contracting Officer of the TCRA. The Director may delegate this authority only with the written approval of the Executive Director.

(b) Operational Procedures. The Director may adopt operational procedures covering the internal function of Purchasing Activities and, as provided above, delegate rights, powers, and authority to subordinate contract and procurement specialists.

(c) Duties. Except as otherwise specifically provided in this Code, the Director shall:

1. Procure or supervise the procurement of all supplies, services and construction for the Board of the TCRA.

2. The Director may purchase directly, without bid or quotations, from State, county or local contracts when the contract expressly permits, or if the awarding jurisdiction and the vendor agree to allow the TCRA to purchase therefrom. ~~If Federal funds are used for such purchases, the requirements and standards of the current version of Federal Transit Administration Circular 4220.1 apply to such purchases.~~

3. Transfer or sell surplus supplies or property (i.e., those supplies no longer having any use to TCRA, including, but not limited to, obsolete or scrap material and nonexpendable supplies that have completed their useful life cycle) in accordance with the provisions of Sections 274.05 and 388.323

of the Florida Statutes to other governmental agencies or to the public by sealed bids, public auction, trade equipment on new purchases, or dispose of property in any other method consistent with the laws of Florida and other applicable laws and regulations. No employee of the Department having direct control of the supplies or handling the disposition of the supplies shall be entitled to purchase any such supplies.

~~4. Follow programs for the inspection, testing and acceptance of supplies or services in accordance with TCRA QA/QC procedures as set forth in TCRA's Quality Assurance Handbook.~~

~~4.5.~~ Relocate excess supplies within the TCRA.

~~5.6.~~ Cooperate with all public agencies and the auditors in the preparation of statistical data concerning the procurement usage and disposition of all supplies, services, and construction. All using divisions shall furnish such reports as the Director may require concerning user needs and stock on hand.

~~6.7.~~ Establish a Contractor performance rating system for use in eliminating those vendors who fail to perform or perform unsatisfactorily in accordance with TCRA's Suspension and Debarment Procedures set out in TCRA's Procurement Procedures. Such rating system may also be used for Contractor evaluation and awarding of contracts in accordance with Rule 30C-2.003, subsection (9)(g).

(7) Duties of General Counsel. The General Counsel shall serve as legal counsel and provide legal services as requested. General Counsel shall review all contracts to be approved by the Board or Executive Director before such documents are executed.

(8) Contract Administration.

(a) Review of Contracts. The Director of Contracts Administration and Procurement shall review all contracts prior to execution.

(b) Contract Administrator. After the award of any contract, the Contract Administrator will ensure that both the TCRA and the Contractor are in compliance with all terms and conditions of the contract, including maintaining current insurance certificates. The TCRA will maintain a written record of performance for each contract, including adherence to delivery requirements and specifications. ~~Performance of the contractor will be evaluated by the Project Manager utilizing TCRA's QA/QC procedures as set forth in TCRA's Quality Assurance Handbook.~~

(c) Contract Performance. In cases where the Contractor does not adhere to delivery and specifications, or is in technical breach of a contract, the TCRA must attempt to rectify the situation with the Contractor and maintain written records of these attempts.

(d) Breach of Contract. In cases where the Contract Administrator is unable to rectify a breach of contract with the Contractor, the matter shall be turned over to the Director along with all the documents for resolution. Resolution will

~~may include but is not limited to:~~ cancellation of the contract; suspension or debarment; ~~or and~~ institution, through General Counsel, of appropriate legal action.

Specific Authority ~~420.52(1)(b); 343.54(1)(b);(3)(i)~~ FS. Law Implemented 343.54(1)(b),(3)(i) FS. History—New 7-5-95, Amended.

#### 30C-2.0021 Definitions.

(1) The words defined in this Rule shall apply to both this Code and the TCRA's Procurement Procedures and shall have the meanings set forth below whenever they appear in this Code and/or the Procedures, unless:

(a) Context Determines Definition. The context in which they are used clearly requires a different meaning; or

(b) Definition Prescribed. A different definition is prescribed for a particular provision.

#### (2) Definitions.

(a) Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(b) Contract means all types of binding agreements, regardless of what they may be called, for the procurement or disposal of supplies, services or construction.

(c) Contractor means any person having a contract with the TCRA.

(d) Contract Administrator means the individual in the Contracts Administration & Procurement Department who has the responsibility to ensure that the provisions of each contract are complied with by both the TCRA and the Contractor.

(e) Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property owned or under the control of the TCRA. It does not include the routine operation, repair, or maintenance of existing structures, buildings, or other real property.

(f) Mandatory Bid Amount means the dollar amount at which the formal bid process is required. The Mandatory Bid Amount is \$25,000.

(g) May denotes the permissive.

(h) Must denotes the imperative.

(i) Person means any business, corporation, partnership, individual, union, committee, club, organization, or group of individuals.

(j) Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

(k) Project Manager means the individual having the responsibility to oversee and manage the day to day activities of a contract.

(l) Regulation means a governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describe organization, procedure, practice or requirements.

(m) Services means the furnishing of labor, time, and effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements but shall include both professional and general services.

(n) Shall denotes the imperative.

(o) Should denotes the permissive.

(p) Specifications means any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery. Specifications may also contain provisions for inclusion of factors which will lead to the ultimate calculation of lowest total cost.

(q) Supplies means all property, including but not limited to equipment, materials, printing, and insurance, excluding real property.

Specific Authority 343.54(1)(b) FS. Law Implemented 343.54 FS. History—New \_\_\_\_\_.

#### 30C-2.003 Source Selection and Contract Formation and Administration.

##### (1) Types of Contracts Allowable.

(a) Except as provided in this section, any type of contract which will promote the best interest of the TCRA may be used. A type of contract other than firm, fixed price may be used only when a determination is made by the Director that such contract is likely to be less costly than the firm, fixed price contract or that it is impractical to obtain the supplies, services or construction required by the firm, fixed price contracting method.

(b) A firm-fixed price contract establishes a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

(c) A cost-reimbursement contract is one in which the contractor is paid its reasonable, allocable and allowable costs of performance regardless of whether the work is completed.

(d) A time and material contract can be used only:

1. After a determination by the Director that no other type of contract is suitable; and

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

(e) Cost plus percentage of cost contracts are prohibited.

(f) Task Order contracts are used for similar type work. The contract is a competitively bid, firm fixed price indefinite quantity contract, against which TCRA issues Task Orders as specific needs arise.

(g) Work Order contracts are used for professional services procured under the procedures set forth in Section (11) of this Rule; and are cost plus fixed fee contracts against which TCRA issues Works Orders as specific needs arise.

(2) Specific Period: A contract for supplies or services may be entered into for any time period not to exceed five (5) years including options. Options are permitted provided the extensions, if any, are included in the solicitation.

(3) Methods of Source Selection: All contracts shall be solicited in accordance with the provisions of this Rule.

(4) Amendments and Change Orders.

(a) An amendment is any change to a contract, task order, or work order for any professional services including all architectural and engineering services that alters the terms and conditions of the original document; or provides for a change in the scope or requirements of the original document beyond what is specifically allowed by the original document. Amendments are formal changes that must be approved at the same signature authority level as the original document.

(b) The TCRA shall have the right, based on a clause contained in each contract for construction or the delivery of goods and services other than those listed in subsection (a) above, to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be approved in advance in accordance with the value of the change order or the calculated value of the time extension. In addition, TCRA shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order.

(c) All amendments and change orders shall be submitted to the Director complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.

(d) Emergency Amendments and Change Orders.

1. Types of Emergency Amendments Change Orders: Any situation that necessitates immediate action on the part of the Project Manager and the Contractor to eliminate danger to public safety, to prevent unnecessary or incorrect work, to authorize work that must be done in a logical sequence, or to eliminate a delay that may significantly increase the cost of the project shall be authorized by an emergency amendment or change order as appropriate.

2. Approval of Emergency Amendments and Change Orders: All emergency amendments and change orders shall be approved by the Director and must be reported to the Board if the amount of the emergency amendment or change order exceeds the amount of change order authority delegated to the Executive Director, as soon after the authorization is given as practical.

3. Audit Trail: All emergency amendments and change orders must contain the reason for the emergency; and provide an audit trail sufficient to verify the reasonableness of the prices charged in the amendment or change order.

(e) Verification of Amendments and Change Orders: The Director will verify all non-emergency amendments and change orders as to the:

1. Appropriateness of the modification of the contract and unreasonableness of a separate bid for the item under consideration.

2. The methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.

(5) Blanket Purchase Orders.

(a) The Director will ~~may~~ issue a blanket purchase order based, if possible, on competitive quotations to procure items on an as-needed basis provided the aggregate amount is below the Mandatory Bid Amount and the order is not issued for over a twelve month period of time.

(b) The Director will ~~may~~ issue a purchase order for any amount to encumber funds from which the TCRA may order items covered by blanket purchase orders.

(6) Procurement by Micro-Purchases.

(a) Procurement by micro-purchases are those purchases which do not exceed \$2,500.

(b) TCRA will attempt to distribute micro-purchases equitably among qualified suppliers in the Dade, Palm Beach, and Broward County area.

(7) Small Purchases.

Small Purchase procedures can be used for procurement of goods or services, excluding architectural and engineering services, valued at less than the Mandatory Bid Amount and of public works/construction projects valued at less than the Mandatory Bid Amount.

(8) Formal Competitive Procurement Process.

Formal competitive procurement procedures are used for procurement of goods or services valued at greater than the Mandatory Bid Amount and all public works/construction projects valued at greater than the Mandatory Bid Amount. The three types of competitive procurement are the Invitation to Bid, the Request for Proposals, and the Letter of Interest process.

(9) Competitive Sealed Bidding.

(a) Conditions for Use.

1. The Invitation to Bid (ITB) competitive procurement process is used for all public works/construction projects (except as provided in Section (15) of this Rule), and, if appropriate, purchases of goods and services whose cumulative value will exceed the Mandatory Bid Amount. The ITB process is coordinated by the Director.

2. The ITB method of procurement is employed when all of the following apply:

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

(b) Public Notice.

A notice of an Invitation for Bid (ITB) will be prepared by the Director, and will be advertised as a public notice and must be published in a newspaper of general circulation; and in the Florida Administrative Weekly or in the Florida on-line Vendor Bid System in sufficient time prior to the date set for bid closing. The notice must include the following minimum information:

1. A general description of the services or goods to be purchased.
2. Where to acquire an ITB and associated documents.
3. The location, day and time of the Pre-Bid Conference.
4. The location, last day and hour bids will be accepted (deadline.)
5. Bid Acceptance Period.
6. Whether Federal funds are being used for the procurement.

(c) Receipt of Bids.

Bids shall be submitted so as to be received at the location and manner designated in the invitation for bids not later than the exact time set for the receipt of bids. Except as provided in this subsection, bids received after this time for any reason shall not be considered and returned to the bidder. A bid will not be considered late if a bid is submitted via U.S. Postal Service Express Mail Next Day Service or a commercial express mail service and the bidder provides written documentation showing that the bid package was dispatched at the place of mailing two working days prior to the date set for bid opening. The timeliness of bids is the sole responsibility of the bidder.

(d) Withdrawal of Bids.

Any bidder may withdraw their bid, either personally or by written request, received by TCRA, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn for a period of at least 180 days following bid opening.

(e) Bid Opening.

1. The Director shall decide when the time set for bid opening has arrived and shall so declare to those present.
2. All bids received in accordance with the time set for receipt shall be publicly opened and when practical, read aloud by the Director to the persons present. The bids received shall

be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read.

(f) Determination of Responsiveness.

1. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

2. A bid shall be rejected when the bidder imposes conditions which modify requirements of the invitation for bids. Bids ~~will~~ may be rejected in cases ~~including but not limited to~~ in which the bidder:

- a. Attempts to protect himself against future changes in conditions such as increased costs, if a total price to TCRA cannot be determined for bid evaluation.
- b. Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery."
- c. States a price but qualifies such price as being subject to "price in effect at time of delivery."
- d. Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
- e. Limits rights of TCRA under any contract clause.
- f. Fails to comply with all of the requirements of the ITB.

3. A bid ~~will~~ may be rejected if a bid bond is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.

4. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

5. After submitting a bid, if a bidder transfers all of his assets or that part of his assets related to the bid during the period between the bid opening and the award, the TCRA will ~~may~~ accept or reject the bid ~~at its sole discretion~~.

(g) Determination of Responsibility.

1. Bidders ~~shall~~ may be asked to provide the Director with any information required to determine the responsibility of the bidder.

2. Before awarding the contract, TCRA shall determine that a prospective contractor is responsible and that prices are reasonable. A responsible prospective contractor is one who meets the standards set forth below:

- a. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
- b. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
- c. Has a satisfactory record of performance. In determining a satisfactory record of performance, the following criteria will be evaluated: contractor integrity; compliance with public policy as determined by the



contractor's conformance to Equal Employment Opportunity requirements and attainment of Disadvantaged Business Enterprise goals; achievement of a work record without disbarment or suspension; schedule compliance; budgetary compliance; and adherence to technical and financial resource requirements. ~~Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered.~~ Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.

d. Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

e. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.

f. Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

3. Evaluation of the responsibility of prospective contractors shall ~~may~~ be made based upon the following sources:

a. A list of debarred, suspended or ineligible firms or individuals.

b. The prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns, current and past production records, lists of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.

c. Publications, including credit ratings, trade and financial journals, and business directories and registers may be used.

d. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.

e. Documented past performance on contracts with TCRA.

(h) Award of the Contract.

1. Unless all bids are rejected, award shall be by written notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming with all the material terms and conditions of the ITB, is the lowest price.

2. Prior to an award being made to other than the lowest bidder, the lowest bidder will be notified in writing by TCRA of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform the contract.

3. Award shall be made by mail or personal delivery to the successful bidder of a notice of award and the proper contract documents. TCRA will finalize the execution of the contract and send a copy to the successful bidder.

4. A contract will ~~may~~ be awarded with a provision for upward or downward price adjustment provided that this allowance was part of the original bid solicitation, and the adjustments are based on a nationally recognized or published index ~~or other criterion acceptable to the Director.~~

(10) Invitation for Revised Bids After Unsatisfactory Initial ITB.

(a) Conditions for Use: An invitation for revised bids will ~~may~~ be used if, after initial bids have been opened, all bids are rejected; if all initial bids submitted result in bid prices in excess of the funds available for the purchase; or if the Director determines that all prices received in response to the initial ITB are unreasonable as to one or more of the requirements and that:

1. There are no additional funds available to permit an award to the responsible bidder submitting the most favorable bid; or

2. Any delay resulting from a resolicitation under revised specifications or quantities under competitive sealed bidding would be fiscally disadvantageous or would not otherwise be in the best interest of TCRA.

(b) Discussions: Discussions will be held with all responsive and responsible bidders who submitted bids in response to the initial ITB. These discussions will address revised specifications and/or revised quantities. All bidders shall be accorded fair and equal treatment with respect to any discussions.

(c) Invitation for Revised Bids.

An invitation for revised bids based on revised specifications or quantities shall be issued as promptly as possible to only those bidders submitting responsive and responsible bids in the initial ITB process. The invitation for revised bids shall provide for a prompt response to the revised requirements.

(d) Award.

An award shall be made upon the basis of the lowest bid price submitted by a responsive and responsible bidder.

(11) Request for Proposal (RFP) Process.

(a) Conditions for Use.

1. The Request for Proposals (RFP) competitive procurement process is used in procurement when: a complete, adequate and realistic specification or purchase description allowing for competition primarily on the basis of price alone may not be available; the contract award amount, whether a firm-fixed price or some type of cost reimbursement contract, can only be determined on the basis of costs of the contractor derived from a negotiation process; discussions or negotiations may be needed to address technical requirements as well as proposed cost or price aspects of the offeror's proposal; and an opportunity can be given to revise proposals and to submit a final proposal at the completion of the discussion phase of the process as determined by the Director, conditions are not practical, advantageous nor appropriate for the use of an ITB. The RFP process is coordinated by the Director.

2. The RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror. An RFP generally includes:

- a. Project and agency background.
- b. Purpose of the engagement.
- c. General firm qualifications desired.
- d. Scope of work or description of the goods to be procured.
- e. Project schedule.
- f. Proposal requirements.
- g. Criteria for selection.
- h. Payment terms.

(b) Public Notice: A notice of an RFP will be prepared by the Director, will be advertised as a public notice, and must be published in a newspaper of general circulation; and in the Florida Administrative Weekly or in the Florida on-line Vendor Bid System in sufficient time prior to the date set for proposal receipt. The notice must include the following minimum information:

1. A general description of the services or goods to be purchased.
2. Where to acquire an RFP and associated documents.
3. The location, day and time of the Pre-Proposal Conference.
4. The location, last day and hour proposals will be accepted (deadline).
5. Whether Federal funds are being used for the procurement.

(c) Receipt of Proposals: Proposals shall be submitted so as to be received at the location and manner designated in the RFP not later than the exact time set for the receipt of proposals. Except as provided in this subsection, proposals received after this time for any reason shall not be considered and returned to the proposer. A proposal will not be considered late if it is received at the location for receipt of proposals after the time set if the proposal is submitted via U.S. Postal Service Express Mail Next Day Service or a commercial express mail services and the proposer provides written documentation showing that the proposal package was dispatched at the place of mailing two working days prior to the date set for receipt of proposals. The only acceptable evidence to establish the time of receipt at TCRA's offices is the time/date stamp of TCRA which shall be placed on the proposal wrapper immediately upon receipt. A TCRA staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

(d) Evaluation of Proposals: All proposals received shall be evaluated by an Evaluation and Selection Committee in accordance with the procedures set forth in Chapter III of TCRA's Procurement Procedures.

(e) Discussions.

1. Discussions are not required to be conducted with any offeror provided:

- a. The solicitation did not commit in advance to discussions or notified all offerors that award might be made without discussion; and the award is in fact made without any written or oral discussion with any proposer;
- b. The procurement is for supplies for which prices or rates are fixed by law and regulation;
- c. The time for delivery will not permit discussions; or
- d. The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.

(2) If discussions are conducted with one offeror, discussions must be conducted with all offerors within the competitive range.

(a) through (e) No change.

(f) Award After Discussions.

Upon completion of discussions, TCRA ~~will may~~ make a selection for contract award in accordance ~~according~~ with subsection (11)(h) without requesting Best and Final Offers if it has determined that the highest rated proposer has the ability to perform under the terms and conditions of a proposed contract, that the price offered by the proposer is advantageous to TCRA, and that the proposer has the financial and technical resources necessary to perform the contract.

(g) Request for Best and Final Offer.

1. If, upon completion of discussions, TCRA does not make a selection for contract award, TCRA will issue to all proposers within the competitive range a request for a final supplement denominated the "Best and Final Offer" (BAFO). Oral requests for BAFOs shall be confirmed in writing. Best and Final Offers must be submitted in accordance with written procedures received from TCRA.

2. Such requests shall advise proposers:

- a. That negotiations are being concluded;
- b. That proposers are being asked for their "best and final" offer, not merely to confirm or reconfirm prior offers; and
- c. That any revision or modification of proposals must be submitted by the date specified.

3. Following the review of the BAFOs by the Evaluation and Selection Committee, the Director shall consolidate the cost and technical evaluations and all score sheets along with their comments and recommendations. After reviewing the evaluations and recommendation made by the Evaluation and Selection Committee, the Director shall make a determination of the recommendation for contract award.

(h) Award of the Contract.

After evaluation of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal most advantageous to the TCRA, price and other factors considered.

(12) Procurement of Professional, Architectural, Engineering, Testing, Landscape Architectural, and Land Surveying Services.

(a) Conditions for Use: Each time TCRA procures professional services for architecture, professional engineering, landscaping architecture or registered land surveyor services for a project where the basic construction cost of which is estimated by the TCRA to be in excess of the threshold amount of Category FIVE articulated in Florida Statute 287.017 or for a planning or study activity when the fee for professional services is in excess of the Category TWO amount articulated in Florida Statute 287.017, ("CCNA Project") TCRA shall comply with the rules for solicitation of services procedures contained herein ~~except that geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.~~

(b) Letters of Interest Solicitation: Each time TCRA is to procure professional services on a CCNA Project, a request for Letters of Interest will be sent to all appropriate firms in TCRA's Vendor Database. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even though a firm that provides the above types of services are also potential sources to perform other services. If sufficient qualified firms are available, Letters of Interest should be sent to a minimum of three (3) firms. Such request for Letters of Interest will request them to:

1. Express their interest in obtaining the particular job.

2. State the staff and background proposed for the particular project including, if applicable, joint ventures, minority participation and whether the firm is a certified minority business enterprise as defined in the Florida Small and Minority Business Assistance Act.

3. Express the fee structure including a breakdown of estimated amounts for the completion of each section of the project. This fee structure is to be submitted in a separate envelope marked as containing the fee structure. If inadequate information is available for the firms to provide a breakdown of estimated cost, the salary structure, multiplier, and a not to exceed amount will be provided in the fee portion of the response. This fee proposal will ~~may~~ be required to be submitted with the submission of the Letter of Interest for an individual job or will ~~may~~ be required at short listing if Letters of Interest are requested for multiple jobs.

(c) Advertisement for CCNA: The TCRA shall advertise at least once in a paper of general circulation within Dade, Broward and Palm Beach Counties advising all interested firms of the CCNA Project and requesting Letters of Interest to be submitted. The public notice shall include a general description of the CCNA project and shall indicate how interested consultants may apply for consideration.

(d) Review of Qualifications: All qualifications and submittals of those firms responding with a Letter of Interest shall be reviewed and evaluated by an Evaluation and Selection Committee in accordance with the procedures set forth in Chapter III of TCRA's Procurement Procedures.

(e) Short List: The Evaluation and Selection Committee shall reduce the number of firms (short list) to at least three for further discussions. In short listing the firms, the Committee shall attempt to select the best qualified firms to render the solicited service for the particular project without considering price or opening the fee submitted by each firm with their letter of interest. A determination should be made that each firm is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm. Such firm must be certified by TCRA to be qualified pursuant to law and the regulation of TCRA.

(f) Discussions: The Evaluation and Selection Committee will ~~may~~ request presentations from the firms and discuss the proposals with the firms when a presentation will afford TCRA to better ascertain qualifications of the proposer, the technical requirements of the proposal, or the prices proposed. The requirements of presentations or discussion will be the same for each firm short listed.

(g) Ranking of Firms: The voting members of the Evaluation and Selection Committee, after discussions and/or presentations by each short listed firm, will vote on the final ranking. The ranking of firms shall indicate the Committee's view of the firm that will best serve the interest of the TCRA with factors considered such as the ability of professional personnel; whether a firm is a certified minority business enterprise, litigation history, past performance; willingness to meet time and budget requirements; location; recent, current, and a projected workload of the firm; and the volume of work previously awarded to each firm by the TCRA.

(h) Ranking Reported to the Board: On completion of the selection process, the Committee shall report the ranking of the firms to the Director who shall immediately advise the members of the Board in writing of the three or more firms selected and their ranking in order of preference.

(i) Negotiations: Upon approval by the Board of the three highest rated firms, the Director shall open the fee proposal of the highest ranked firm and attempt to negotiate a contract with the highest ranked firm to perform services at a compensation which is determined to be fair, competitive and reasonable. If the Director is unable to negotiate a satisfactory contract with

the firm obtaining the highest ranking, negotiations with that firm shall be formally terminated. The Director then shall undertake negotiations with the second ranked firm. If these negotiations also prove unsatisfactory, negotiations shall again be terminated and the Director will negotiate, in turn, with each firm in accordance with their ranking by the committee, until an agreement is reached or the short list is exhausted. When a short list is exhausted, a new solicitation for Letters of Interest in accordance with the provision of this subsection must be initiated.

(j) Compensation: TCRA shall negotiate a contract with the most qualified firm for professional services at compensation which TCRA determines is fair, competitive, and reasonable. In making such determination, TCRA shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity.

(k) Truth in Negotiation Certificate: On any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount of Category FOUR articulated at Florida Statute 287.017, TCRA shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional contract under which such a certificate is required shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the TCRA determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Any such contract adjustments can only be made within one year following the end of the contract.

(l) Award of Contract: At the successful conclusion of negotiations, a contract will may be presented to the Board for award. The Board will review the selection process and reject all proposals if it determines such rejection is consistent with the provisions of this Rule is in the best interests of TCRA.

(m) Contractor Responsibility: The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor shall may be liable to TCRA for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

(n) Contingent Fee Disclosure.

1. Each contract entered into by the TCRA for professional services shall contain the following prohibition against contingent fees:

"The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) to solicit or secure this agreement and that he or she

has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement."

2. For the breach or violation of this provision, TCRA shall have the right to terminate the agreement without liability ~~at its discretion~~ and to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(o) Testing Services: Professional Testing Services covered under CCNA will may be purchased by the establishment of a Rotating List for purchases above or below the Mandatory Bid Amount. The award must be made by the Board and the contracts signed by the Chair, the Executive Director, General Counsel, Director, and the Contractor.

(13) Sole Source Procurement.

(a) A sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal or bid from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. This documentation is normally furnished by the originating department and verified by the Director. The Executive Director is responsible for making the final determination on sole source procurements.

(b) A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement.

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

(1) The item is available only from a single source;

(2) The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to the TCRA, or a situation requiring immediate action by the TCRA, as determined by the TCRA) for the requirement will not permit a delay resulting from competitive solicitation;

(3) FTA authorizes noncompetitive negotiations;

(4) After solicitation of a number of sources, competition is determined inadequate; or

(5) The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) as "equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used" and the item is that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such

manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

(d) A cost analysis, i.e., verifying the proposed cost data, the projections of the date, and the evaluation of the specific elements of costs and profit, is required.

(e) The Director shall conduct negotiations, as appropriate, as to price, delivery, and terms.

(14) Two Step Procurement Process.

(a) Two step procurement combines elements of sealed bidding and competitive negotiation.

(b) Step One is the issuance of a Request for Technical Proposals (RFTP). Proposers are required to submit technical proposals, unpriced, specifying their capability of meeting TCRA's requirements for the procurement in question. Proposals will be evaluated, in accordance with the criteria published in the RFTP to determine whether they are technically acceptable. The determination of technical acceptability may be made by TCRA on the basis of the proposals as submitted, or pursuant to discussions with any or all proposers for purposes of clarifying technical requirements and submittals.

(c) Step Two is the issuance of an Invitation to Bid (ITB) to those proposers determined under Step One to have submitted technically acceptable proposals. Award will be made to the lowest responsible and responsive bidder, selected from among those proposers requested to submit bids.

(15) Design-Build Procurement.

(a) A design-build contract is a single contract with a single contractor for the design and construction of a public construction project.

(b) The design criteria package must be prepared. The purpose of the design criterion package is to furnish sufficient information so as to permit potential contractors to prepare a bid or a response. The package must include performance-based criteria for the project. The design criteria package must be prepared and sealed by a design criteria professional employed by or retained by TCRA.

(c) Design-build contracts will be solicited by the use of a competitive proposal selection process as described in Section (11) of this Rule; or by the use of a bidding process as described in Section (9) of this Rule; or by the use of a two-step procurement process as described in Section (14) of this Rule; or by the use of a qualifications-based selection process pursuant to the provisions of Section (12) of this Rule only if the majority of the work contemplated is to be conducted by an architect, professional engineer, landscaping architect or registered land surveyor.

(d) The selected firm must establish a guaranteed maximum price and a guaranteed completion date.

(e) If the qualifications-based selection process is utilized, during the selection of the design-build firm, a licensed design professional appropriate to the project will serve as the TCRA's representative.

(f) Procedures for the use of a competitive proposal selection process must include the following:

1. The preparation of a design criteria package for the design and construction of the project.

2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.

3. The criteria, procedures, and standards for the evaluation of design-build contract proposals, based on price, technical, and design aspects of the project, weighted for each specific project.

4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

(g) The employed or retained design-criteria professional will assist in:

1. The evaluation of the responses submitted by the design-build firm.

2. The supervision or approval of the detailed working drawings of the project.

3. The evaluation of the compliance of the project construction with design criteria package prepared by the design-criteria professional.

Specific Authority ~~420.53(1)(b);~~ 343.54(1)(b),(3)(i) FS. Law Implemented 343.54(1)(b),(3)(i) FS. History--New 7-5-95, Amended.

### 30C-2.009 Debarment and Suspension Procedures.

(1) Authority: After thirty (30) days reasonable notice to the person involved and a hearing before the Director ~~reasonable opportunity for that person to be heard,~~ the Director, after consultation with the Office of General Counsel, shall have authority to debar a person for cause from consideration for award of future contracts. The debarment shall be for a period commensurate with the seriousness of the cause(s), and no more than generally not to exceed three (3) years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period. Where the offense is willful or egregious, a longer term of debarment will may be imposed, up to a period of five (5) years an indefinite period. The Director shall also have the authority to suspend a person from consideration for award of contracts if there is probable cause for debarment as provided in Paragraph (2) of this rule. The suspension shall not be for a period exceeding three (3) months.

(2) Cause for Debarment. The causes for debarment include the following:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor.

(c) Conviction under state or Federal antitrust statutes arising out of the submission of bids or proposals.

(d) Violation of contract provisions as set forth below, ~~of a character which is regarded by the Director to be so serious as to justify debarment action.~~

1. Deliberate failure without good cause to perform in accordance with specifications or within the time limit provided in the contract; or

2. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts: provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(e) Refutation of an offer by failure to provide bonds, insurance or other required certificates within the time period set forth in contract documents ~~a reasonable time period.~~

(f) Refusal to accept a purchase order, agreement, or contract, or to perform thereon provided such order was issued timely and in conformance with the offer received.

(g) Presence of principals or corporate officers in the business of concern, who were principals within another business at the time when the other business was suspended within the last three years under the provisions of this subsection.

(h) Violation of the ethical standards for public business as set forth in Florida Statutes ~~as set forth in state law.~~

(i) Unilateral withdrawal of a bid before one hundred eighty (180) days have elapsed from the date of bid opening or a time specified in the ITB.

~~(j) Any other cause the Director determines to be so serious and compelling as to affect responsibility as a TCRA contractor including debarment by another governmental entity for any cause listed in this Code.~~

(3) Decision: The Director shall issue a written decision to debar or suspend. The decision shall:

(a) State the reason for the action taken; and

(b) Inform the debarred or suspended person of his rights to appear before the Board of the TCRA.

(4) Notice of Decision: A copy of the decision for the debarment or suspension shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(5) Hearing Procedure for Debarment, Suspension of Vendors, and Determination of the Director. See Chapter 28-106, F.A.C.

(a) Right of Appeal: Any person dissatisfied or aggrieved with the notification of the Director's determination regarding the resolution of a protested solicitation or proposed award or a determination to debar or suspend must, within ten (10) calendar days of such notification, appeal said determination to the TCRA in accordance with the procedures contained in this subsection.

(b) Hearing Date: Within ten (10) calendar days from the receipt of the notice of appeal, the TCRA shall schedule a hearing at the next regularly scheduled meeting of the Board, at which time the person shall be given the opportunity to demonstrate why the decision of the Director should be overturned.

(c) Hearing Procedure: The procedure for any hearing required by this article shall be:

1. The TCRA shall cause to be served upon the person a notice of hearing, stating the time and place of the hearing. The notice of hearing shall be sent by certified mail, return receipt requested, to the mailing address of the vendor.

2. The person shall have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to examine opposing witnesses on any relevant matter, even though the matter was covered under direct examination, and to impeach any witness regardless of which party first called him to testify.

3. In any hearing before the Board, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a trial in the courts of Florida.

4. Within thirty (30) calendar days from the hearing, the Board shall complete and submit to the Director and the person requesting said hearing a final order consisting of the findings of fact and conclusions of law as to the granting or denial of the appeal.

5. All persons must comply with this procedure before challenging the decision pursuant to any other procedure.

(6) Reinstatement.

(a) Grounds: Request for reinstatement shall be made in writing based upon the following:

1. Discovery of new and material evidence not previously available;

2. Dismissal of the indictment or reversal of the conviction;

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

(b) Procedures: The request for reinstatement shall be forwarded by the Director to the TCRA Board for a determination on reinstatement. The determination of whether to reinstate shall be based on the written submission of evidence, without further hearing. Upon consideration of the written submission and any response from the Director, the TCRA Board shall make a determination whether or not reinstatement is warranted under the standards set forth above.

Specific Authority 343.54(1)(b) FS. Law Implemented 343.54 FS. History—New \_\_\_\_\_.

#### 30C-2.010 Vendor Protest Procedures.

(1) Notice: The TCRA shall provide notice of its decision or intended decision concerning solicitations or contract awards by certified United States mail, return receipt requested. The notice shall contain the following statement: "Failure to file a protest within the time prescribed in § 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."

(2) Filing of Protest. See Chapter 28-110, F.A.C.

(a) Protests must be filed with:

Tri-County Commuter Rail Authority  
800 N. W. 33rd Street  
Suite 100  
Pompano Beach, Florida 33064

All protests must be received at the TCRA address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Eastern Standard or Daylight Time. Failure to file a notice of protest or failure to file a formal written protest as provided in subsections (b) and (c) shall constitute a waiver of proceedings. The formal written protest shall state with particularity the facts and law upon which the protest is based.

(b) With respect to a protest of the specifications contained in an ITB or in an RFP, the notice of protest shall be filed in writing within 72 hours after the receipt of notice of the project plans and specifications or intended project plans and specifications in an ITB or RFP, and the formal written protest shall be filed within 10 days after the date the notice of protest is filed.

(c) Any person who is affected adversely by TCRA's decision or intended decision concerning a solicitation or contract award shall file with the TCRA a notice of protest in writing within 72 hours after receipt of TCRA's written notice of TCRA's decision or intended decision, and shall file a formal written protest within 10 days after the date the notice of protest is filed.

(3) Receipt of Protest: Upon receipt of the formal written protest which has been timely filed, TCRA shall stop the solicitation process or the contract award process until the subject of the protest is resolved by TCRA final action, unless the Director sets forth in writing particular fact and

circumstances which require the continuance of the solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare.

(4) Resolved Protest: The TCRA on its own initiative or upon the request of a protester, shall provide an opportunity to resolve the protest by mutual agreement between the parties within seven days, excluding Saturdays, Sundays, and legal holidays, of receipt of a formal written protest.

(5) Unresolved Protest. If the subject of a protest is not resolved by mutual agreement within seven days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest, and if there is not a disputed issue of material fact, an informal proceeding shall be conducted pursuant to § 120.57(2), F.S. and Part III, Chapter 28-106, F.A.C. Such informal proceeding shall be conducted whenever the substantial interests of a party is determined by a TCRA decision and there exists no disputed issue of material fact. It is not necessary that such party's affected interest relate to a solicitation or contract award decision by TCRA. The Director shall conduct the informal hearing as follows:

TCRA shall give reasonable notice to:

(a) Affected parties of the action by TCRA of its decision or refusal to take action together with a summary of the factual, legal and policy grounds therefore;

(b) Provide the affected persons or their counsel an opportunity at a convenient time and place to present to TCRA or a TCRA representative designated as a hearing officer, written or oral evidence in opposition to the TCRA's action or the refusal to act, or a written statement challenging the grounds upon which the TCRA has chosen to justify its action or inaction;

(c) If the objections of the persons or parties are overruled, a written record should be provided within seven days consisting of:

1. The notice and summary of grounds;
2. Evidence received or considered;
3. All written statements by persons and parties;
4. Any decisions overruling objections;
5. All matters placed on the record after an *ex parte* communication; and
6. The official transcript.

(6) Referral of Protest: If the subject of a protest is not resolved by a mutual agreement within seven days, excluding Saturdays, Sundays, and legal holidays, of receipt of the formal written protest, and if there is a disputed issue of material fact, TCRA shall refer the protest to the Florida Division of Administrative Hearings for proceedings consistent with § 120.57(1), Florida Statutes. TCRA shall refer any protest where the substantial interest of party is determined by TCRA action and there ~~three~~ is a disputed issue of material fact to the Division of Administrative Hearings for proceedings consistent with 120.57(1), Florida Statutes.

(7) Protest to Federal Transit Administration.

(a) A protester adversely affected by a final protest decision of TCRA may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1, as currently in effect as of the date of TCRA's decision on the protest.

(b) Under the provision of the FTA Circular, FTA will only review protests regarding the alleged failure of TCRA to have written protest procedures or the alleged failure to have followed such protest procedures or the alleged failure to review a complaint or protest.

(c) In accordance with the FTA Circular, such protest must be filed no later than 5 days after the protester knew or should have known of TCRA's alleged failure listed above.

(d) Under the following conditions, TCRA may proceed with the procurement in spite of a pending protest to the FTA:

1. The items to be procured are urgently required;
2. Delivery or performance will be unduly delayed by failure to make the award promptly; or
3. Failure to make prompt award will otherwise cause undue harm to TCRA or the Federal Government.

Specific Authority ~~420.53(1)(b)~~; 343.54(1)(b),(3)(i) FS. Law Implemented 343.54(1)(b),(3)(i) FS. History—New 7-5-95, Amended.

30C-2.011 Solicitation or Awards in Violation of Law or Rules and Regulations.

(1) Applicability of this Rule: The provisions of this Rule apply where it is determined administratively or upon administrative or judicial review that a solicitation, proposed award, or award of a contract is in violation of law or rules and regulations. If the violation occurs prior to the award, the award shall be canceled or revised to comply with the law. Additional provisions regarding solicitations or awards in violation of law or rules and regulations are contained elsewhere in this Procurement Code.

(2) Remedies After an Award: If after an award it is determined that a solicitation of award of a contract was in violation of this Code or procedures of the TCRA, then:

(a) Good Faith of Vendor: If the person awarded the contract has not acted fraudulently or in bad faith:

1. The contract will ~~may~~ be ratified and affirmed, provided it is determined that doing so is in the best interest of the TCRA; or
2. The contract will ~~may~~ be terminated in a manner designed to eliminate any damages to the contractor.

(b) Bad Faith of Vendor: If the person awarded the contract has acted fraudulently or in bad faith:

1. The contract will ~~may~~ be declared null and void; or
2. The contract will ~~may~~ be ratified and affirmed if such action is consistent with the provisions of this rule. Such action does not prejudice the TCRA's rights to such damages as are ~~may be~~ appropriate.

Specific Authority ~~420.53(1)(b)~~; 343.54(1)(b),(3)(i) FS. Law Implemented 343.54(1)(b),(3)(i) FS. History—New 7-5-95, Amended.

**DEPARTMENT OF ELDER AFFAIRS**

**Emergency Home Energy Assistance**

RULE NOS.:	RULE TITLES:
58E-1.001	Purpose and Legal Base
58E-1.002	Referral Services
58E-1.003	Household Composition
58E-1.004	Eligibility Factors Other Than Income
58E-1.005	Determination of Eligibility Based on Income
58E-1.006	Income
58E-1.007	Verification
58E-1.008	Program Administration
58E-1.009	Eligible Activities
58E-1.010	Ineligible Activities
58E-1.011	Amount of Assistance

**NOTICE OF WITHDRAWAL**

Notice is hereby given that the above proposed rule repeals, as noticed in Vol. 26, No. 6, February 11, 2000, Florida Administrative Weekly have been withdrawn due to time constraints.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**Board of Professional Surveyors and Mappers**

RULE NO.:	RULE TITLE:
61G17-1.0051	Probable Cause Panel

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 26, No. 9, March 3, 2000 issue of the Florida Administrative Weekly. The changes are in response to comments received from the Joint Administrative Procedures Committee, and from the board meeting held May 19, 2000. Subsection (2) has been changed to read as follows:

(2) The chair shall appoint two members to serve on the probable cause panel, one of which must be either a present or former surveyor and mapper member of the Board. The other member shall be a present or former consumer member of the Board if one is available and willing to serve. However, the probable cause panel must, at all times, contain a present board member. Nothing herein shall be construed to limit to one the number of surveyor and mapper past Board members that the chair may appoint to the probable cause panel if there are more than two members appointed to that panel by the chair.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Professional Surveyors and Mappers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750



**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION****Board of Professional Surveyors and Mappers**

RULE NOS.: RULE TITLES:

61G17-4.001 Requirements

61G17-4.004 Grading

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rules in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 26, No. 9, March 3, 2000 issue of the Florida Administrative Weekly. The changes are in response to comments received from the Joint Administrative Procedures Committee, and from the board meeting held May 19, 2000.

Rule 61G17-4.001, Subsection (3) has been changed to read as follows:

(3) Except as provided by NCEES testing requirements, examinations are open book, that is, the use of notes, reference books, and slide rule, is permitted. Programmable and non-programmable calculators are permitted so long as they are: hand-held, silent, battery-operated or solar powered, non-printing, self-contained, and without auxiliary memory capabilities, video screens, or peripheral equipment. All such materials including pens and pencils are to be furnished by the applicant. Applicants should come equipped with ordinary drawing instruments.

Rule 61G17-4.004, Subsection (1) has been changed to read as follows:

(1) The Principles and Practice Examination and the Fundamentals Examination contain machine graded, multiple choice questions developed by the NCEES. The minimum score necessary for passing the Principles and Practice Examination and the Fundamentals Examination shall be set by NCEES through the use of a Modified Angoff Method for determining the minimally acceptable raw score necessary to pass the examination. The passing score shall be established by NCEES.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Professional Surveyors and Mappers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION****Board of Professional Surveyors and Mappers**

RULE NOS.: RULE TITLES:

61G17-5.0031 Continuing Education Credit for

Biennial Renewal

61G17-5.0043 Obligations of Continuing

Education Providers

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 26, No. 9, March 3, 2000 issue of the Florida Administrative Weekly. The changes are in response to comments received from the Joint Administrative Procedures Committee, and from the board meeting held May 19, 2000.

Rule 61G17-5.0031 has been changed as follows:

1) Subsection (1)(a):

(1)(a) At least six (6) of the twenty-four (24) credits must be obtained by completing an approved provider's course or seminar on Florida's minimum technical standards or an approved provider's course or seminar on Florida's laws affecting the practice of surveying and mapping. The licensee shall rotate completion of these courses or seminars so that, for one biennium, the licensee completes a course or seminar on minimum technical standards and, for the next biennium, the licensee completes a course or seminar on laws affecting the practice of surveying and mapping.

2) Subsection (5) shall be deleted in its entirety.

Rule 61G17-5.0043, Subsection (6) has been changed to read:

(6) Notify the Board within thirty (30) days of any change in the address or telephone number of the provider;

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Professional Surveyors and Mappers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION****Board of Professional Surveyors and Mappers**

RULE NO.: RULE TITLE:

61G17-8.0011 Fees

**NOTICE OF CHANGE**

Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 26, No. 9, March 3, 2000 issue of the Florida Administrative Weekly. The changes are in response to comments received from the Joint Administrative Procedures Committee, and from the board meeting held May 19, 2000. Subsection (13) has been changed to read as follows:

(13) The examination review fee shall be based on the actual cost incurred by the Department to provide examination review.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Sherry Landrum, Executive Director, Board of Professional Surveyors and Mappers, Northwood Centre, 1940 N. Monroe Street, Tallahassee, Florida 32399-0750

**DEPARTMENT OF CHILDREN AND FAMILY SERVICES****Economic Self Sufficiency Program Office**

RULE NO.: 65A-4.101  
 RULE TITLE: WAGES Early Exit Diversion Program  
 NOTICE OF WITHDRAWAL

Notice is hereby given that the above proposed rule, as noticed in the Florida Administrative Weekly, Vol. 26, No. 7, February 18, 2000, has been withdrawn.

## Section IV Emergency Rules

**DEPARTMENT OF THE LOTTERY**

RULE TITLE: Replacement of Obsolete Emergency Rules  
 RULE NO.: 53ER00-26  
 SUMMARY OF THE RULE: This emergency rule is replacing an emergency rule determined to be invalid, and therefore obsolete, and is also replacing other emergency rules that are unnecessary or obsolete.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Diane D. Schmidt, Department of the Lottery, Capitol Complex, Tallahassee, Florida 32399-4011

**THE FULL TEXT OF THE EMERGENCY RULE IS:**53ER00-26 Replacement of Obsolete Emergency Rules.

The following Department of the Lottery emergency rules relating to Lottery procedures and games are obsolete. Emergency rule 53ER99-48 was declared invalid in DOAH Case No. 99-4431RE. Emergency rules 53ER99-1, 53ER99-14, 53ER99-18, 53ER99-25, 53ER99-38, 53ER99-55, 53ER99-62, and 53ER99-63 are obsolete because the games have concluded or the emergency rule provisions have been adopted by permanent rule provisions.

Specific Authority 24.109(1) FS. Law Implemented 24.109(1), 120.74(1)(c) FS. History—New 5-25-00. Replaces 53ER99-1, 53ER99-14, 53ER99-18, 53ER99-25, 53ER99-38, 53ER99-48, 53ER99-55, 53ER99-62, 53ER99-63, FAC.

THIS EMERGENCY RULE TAKES EFFECT IMMEDIATELY UPON BEING FILED WITH THE DEPARTMENT OF STATE.

EFFECTIVE DATE: May 25, 2000

**DEPARTMENT OF THE LOTTERY**

RULE TITLE: Instant Game 303 Specifics  
 RULE NO.: 53ER00-27  
 SUMMARY OF THE RULE: Instant Game Number 303 Specifics, "WINNER'S CIRCLE," will be sold by Florida Lottery retailers on a date to be determined by the Secretary of

the Department. The rule sets forth the specifics of the game, procedures to be followed on how to play the game, and the number and size of prizes in the game.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Diane D. Schmidt, Legal Analyst, Department of the Lottery, Capitol Complex, Tallahassee, Florida 32399-4011

**THE FULL TEXT OF THE EMERGENCY RULE IS:**53ER00-27 Instant Game 303 Specifics.

(1) Name of Game. Instant Game Number 303 "WINNER'S CIRCLE."

(2) Price. WINNER'S CIRCLE tickets sell for \$2.00 per ticket.

(3) WINNER'S CIRCLE Lottery tickets shall have a series of numbers in Machine Readable Code (or bar code) on the back of the ticket, along with a VIRN under the latex area on the ticket. To be a valid winning WINNER'S CIRCLE Lottery ticket, a combination of essential elements sufficient to validate the ticket must be present as set forth in Rule 53ER92-63(1)(a), FAC. In the event a dispute arises as to the validity of any WINNER'S CIRCLE Lottery ticket, the VIRN number under the latex shall prevail over the bar code.

(4) The "YOUR HORSE NUMBERS" play symbols and play symbol captions in WINNER'S CIRCLE are as follows:

## INSERT SYMBOLS

(5) The "WINNING HORSE NUMBERS" play symbols and play symbol captions in WINNER'S CIRCLE are as follows:

## INSERT SYMBOLS

(6) The prize symbols and prize symbol captions in WINNER'S CIRCLE are as follows:

## INSERT SYMBOLS

(7) The "BONUS SPOT" play symbols and play symbols captions in WINNER'S CIRCLE are as follows:

## INSERT SYMBOLS