

Capital District Transportation Authority

Procurement Manual

Disposition of Surplus Property

CDTA Code of Ethics

2009

**Capital District Transportation Authority and its subsidiaries
110 Watervliet Avenue
Albany, NY 12206**

Adopted April 29, 2009

*Procuring the goods and services necessary to provide
safe and reliable public transportation at a reasonable cost.*

CAPITAL DISTRICT TRANSPORTATION AUTHORITY

TABLE OF CONTENTS

I. INTRODUCTION..... 4

II. PROCUREMENT POLICY..... 4

III. DEFINITIONS..... 5

IV. RESPONSIBILITIES..... 8

A. BOARD OF DIRECTORS..... 9

B. EXECUTIVE DIRECTOR..... 9

C. DIRECTOR OF PROCUREMENT..... 9

D. GENERAL COUNSEL..... 10

E. CHIEF FINANCIAL OFFICER (CFO)..... 10

F. STOCK CLERKS AND FOREMEN..... 11

G. PURCHASER OR PROJECT MANAGER..... 11

H. CONTRACTOR PURCHASES..... 11

V. GENERAL RULES APPLICABLE TO ALL PROCURMENT..... 12

A. PROCUREMENT FILE..... 12

B. CONTRACTING REQUIREMENTS..... 12

C. PURCHASE ORDERS..... 13

D. STATE PROCUREMENT REQUIREMENTS..... 13

**E. SPECIAL PROCEDURES FOR PROCURING SERVICES
 FROM A PROFESSIONAL FIRM..... 13**

**F. PROMOTING AND ASSISTING PARTICIPATION BY MINORITY
 OR WOMEN-OWNED BUSINESS ENTERPRISES..... 16**

**G. PROCUREMENT CONTRACTS WHICH INVOLVE FORMER
 OFFICERS OR EMPLOYEES OF CDTA..... 16**

**H. CDTA PROMOTES PARTICIPATION BY NEW YORK STATE
 BUSINESS ENTERPRISES..... 16**

I. ANNUAL FINANCIAL AND COMPLIANCE REPORT..... 16

J. REVENUE CONTRACTS..... 16

**VI. PROCUREMENT PLANNING AND TYPES OF CONTRACTING
METHODS..... 17**

A. PROCUREMENT METHODS..... 17

B. TYPES OF CONTRACTS..... 19

C. GRANT REQUIREMENTS 20

D. RESTRICTIONS ON CONFLICTS AND LOBBYING..... 20

VII. PROCUREMENT PROCEDURES..... 23

PROCEDURE 1 - Petty Cash 23

PROCEDURE 2 - Micro Purchases 25

PROCEDURE 3 - Mini Purchases 26

PROCEDURE 4 - Small Purchases 27

PROCEDURE 5 – Sealed Bid	29
PROCEDURE 6 – Request for Proposals	32
PROCEDURE 7 – Sole or Single Source	35
PROCEDURE 8 - Unsolicited Proposals for Public-Private Partnerships	36
Appendix A: Protest/Appeal Procedure.....	
Appendix B: Processing Purchase Orders	
<u>Attachments</u>	
Attachment #1: Record of Contract	
Attachment #2: Summary of Policy	
Attachment #3: Affirmation	
Attachment #4: Disclosure	
Attachment #5: Certification	
<u>Figures</u>	
Figure 1: Procurement Function - Principal Working Relationships	
Figure 2: CDTA Procurement Requirements.....	
Figure 3: Purchase Order Flow.....	
Figure 4: Parts Receipt Procedure Step Chart.....	
Figure 5: Parts Issue Procedure Step Chart.....	
Figure 6: Competitive Bidding Procedure Flow Chart.....	
Figure 7: Project Manager’s Procurement File Checklist.....	
Figure 8: Funding Information Form.....	
Figure 9: PO Change Request Form.....	
PART II.	
DISPOSITION OF PROPERTY GUIDELINES	56
PART III.	
CDTA CODE OF ETHICS	60

I. INTRODUCTION

A. This Capital District Transportation Authority (CDTA) Procurement Manual contains comprehensive guidelines that detail the operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts with CDTA and its subsidiaries. This Manual is intended to be in full compliance with Public Authorities Law section 2879 and has been developed to aid CDTA employees and suppliers with the CDTA procurement process. This Manual also governs revenue contracts, the consideration of proposals initiated by CDTA, unsolicited proposals received by CDTA, and the disposition of surplus property. This Manual also addresses the manner of sales for surplus personal property. The Manual does not address the purchase of any interest in real property, but may be used as a guide for the sale or leasing of real property possessed by CDTA. The specific objectives of this manual are as follows:

1. To serve as a reference guide.
2. To specify general and specific procedures.
3. To define roles and responsibilities.
4. To document policy and compliance with applicable governmental requirements including all of the following:
 - a. Applicable provisions of Article IX of the New York Public Authorities Law, including, but not limited to sections 2879, 2875, 2875-b, 2878, 2878-a, 2880, 2895, 2896, 2897, and 2931.
 - b. Applicable provisions of Ethics Law (NY Public Officers' Law), including, but not limited to sections 73 and 74.
 - c. Applicable provisions of Article IX of the New York State Finance Law, including, but not limited to sections 4(c), 139-i, 139-j, 139-k and 162.
 - d. Applicable provisions of Article 4-c of the New York Economic Development Law, including, but not limited to sections 141 and 143.
 - e. Applicable provisions of the New York Correction Law, including, but not limited to section 184.
 - f. Applicable Omnibus Procurement Act requirements and the U.S. Department of Transportation Federal Transit Administration (FTA) Circular 4220.1d (or the latest revision) "Third Party Contracting Guidelines."
 - g. The FTA's Best Practices Procurement Manual.
 - h. The Certifications and Assurances provided by CDTA to the FTA pursuant to the Master Agreement as a condition of being a recipient of federal transportation and transit funding.

II. PROCUREMENT POLICY-

A. GUIDING PRINCIPLE: Procurement is the process by which CDTA acquires the goods and services necessary to fulfill its mission. CDTA shall acquire necessary goods and services in the most cost-effective manner. It is the intent that this manual shall comply with all applicable state and federal laws so that the manual shall be superseded by those laws where they are applicable. The selection of Business Partners, Contractors and Vendors shall be driven by a determination of what is in the best interests of CDTA and the public for whose benefit CDTA was created. As a general rule, CDTA will promote full and open competition in procurement by establishing clear specifications and adhering to a selection process that adheres to established criterion for the procurement, is transparent to public scrutiny, and is free from any improper influence.

B. ETHICS: The New York State Public Officers Law is applicable and controlling with regard to the ethical conduct of all CDTA officers and employees. Members, officers and employees of CDTA who have any financial interest in the outcome of procurement are expressly prohibited from making any decision about the procurement and are prohibited from disclosing confidential information. No member or officer is permitted to use, or attempt to use, his or her official position to secure unwarranted privileges or exemptions for himself or others and shall not give any reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of official duties, or that he is effected by the kinship, rank, position or influence of any party or person. Applicable laws include Public Officers' Law sections 73 and 74.

III. DEFINITIONS: As used in this manual, the terms set forth, shall be given the following meaning:

1. **Acceptance** is agreement to the terms of an offer. An offer must be accepted without changing or qualifying the terms of the offer.
2. A **bid** is a formal written offering that follows very precise prescribed procedures stipulated by the CDTA in a public solicitation or "invitation for bid" (IFB) most usually submitted by a bidder/vendor in a "sealed bid" envelope. Sealed bids are always publicly opened and read aloud. A purchase or contract award is based on the "lowest and best" price from those bidders, who submit responsive and responsible bids. Bids for procurements valued at less than \$15,000 will generally utilize the simplified bidding process described for "Mini-purchases" and while kept confidential, will not be sealed.
3. **Business Partner.** A business partner is an individual, partnership, or corporation with which CDTA enters into a contractual relationship to advance a project initiated in response to an unsolicited proposal.
4. **"CDTA"** means the Capital District Transportation Authority or one of its subsidiary corporations.
5. **"Contacts"** shall mean any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental procurement.
6. A **contract** is a formal instrument signed by the contractor and the authorized CDTA representative that binds the parties and stipulates all goods or services to be rendered and all terms and conditions of the procurement. Verbal agreements are not recognized in the contract.
7. **"Contractor"** means any person, partnership, private corporation or association: (i) selling materials, equipment, or supplies or leasing property or equipment to a corporation; (ii) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for or on behalf of a corporation; or (iii) rendering or providing services to a corporation pursuant to a contract.
8. **"Contracting officer"** shall mean the officer or employee of a public authority who shall be appointed by resolution of the board of the public authority to be responsible for the

disposition of property.

9. **"Construction item"** means any such item or material used in construction and which is procured directly by CDTA or any such item or material commonly used in construction which is procured by a person, other than a municipality, under contract with the public authority or office.
10. A **cost analysis** - a cost analysis is a review and evaluation of the separate cost elements and the proposed profit of (a) an offeror's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs. A cost analysis is generally conducted to form an opinion on the degree to which the proposed cost, including any contractor profit as a separate element of cost to the agency, represents what the performance of the contract should cost, assuming reasonable economy and efficiency.
11. A **disadvantaged business enterprise (DBE)** means any business enterprise, including a sole proprietorship, partnership or corporation that is certified by the New York State Department of Transportation, Office of Equal Opportunity Development and Compliance, (518) 457-1129.
12. **"Dispose"** or **"disposal"** shall mean transfer of title or any other beneficial interest in personal or real property in accordance with [section twenty-eight hundred ninety-seven](#) of the Public Authorities Law.
13. A **Master Agreement** shall be a contract employed to cover multiple small construction or maintenance projects, each of which shall be procured in the manner required by these guidelines. A Master Agreement alone does not carry with it any guarantee of work, but rather an acknowledgement of the terms and conditions that shall govern such work in the event that there is an agreement to do any. Accepted proposals for work shall reference the terms and conditions of the Master Agreement and the date of that agreement.
14. **Methods of procurement** that the CDTA follows include the five methods as defined in the FTA circular 4220.1d, as amended, and also make provision for the requirements articulated in New York law. These methods include; micro purchases, "mini" purchases, small purchases, sealed bid or invitations for bid (IFB), competitive negotiations or requests for proposals (RFP), unsolicited proposals and noncompetitive negotiations.
15. A **Notice of procurement contract opportunities** shall be the written advertisement that is published and contains: (i) the name of the contracting authority and/or subsidiary; (ii) the contract identification number; (iii) a brief description of the goods or services sought, the location where goods are to be delivered or services provided and the contract term; (iv) the address where bids or proposals are to be submitted; (v) the date when bids or proposals are due; (vi) a description of any eligibility or qualification requirement or preference; (vii) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (viii) any other information deemed useful to potential contractors; (ix) the name, address, and

telephone number of the person to be contacted for additional information; and (x) a statement as to whether the goods or services sought had in the immediately preceding three year period been supplied by a foreign business enterprise. (EDL 143)

16. An **Offer** is a promise to provide goods or services according to specified terms and conditions in exchange for material compensation.
17. **“Official” newspapers** - The CDTA will advertise in official newspapers (i.e. Times Union, Troy Record, Saratogian, Schenectady Gazette) and the “New York State Contract Reporter”.
18. **OGS** - New York, Office of General Services (OGS) contract numbers shall be included on purchase orders as a reference number.
19. **"Practicable"** means capable of being used without violating the following criteria: performance, availability at a reasonable price, availability within a reasonable period of time and maintenance of a satisfactory level of competition.
20. A **Preferred Source** shall mean a vendor or contractor that has been accorded with preferred status by the State of New York, including the department of correctional services, qualified charitable non-profit-making agencies for the blind, mentally ill, severely disabled, or veterans.
21. A **price analysis** - A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements to determine whether the price quoted constitutes a fair and reasonable, or prevailing market price. Price analysis is based essentially on data verifiable independently from the offeror, from past experience, and/or from competitive solicitations at CDTA or elsewhere.
22. A **procurement contract** shall mean any written agreement entered into by an agency for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars or more. The term does not include an agreement for employment in the civil service. (PAL 2879, EDL 141)
23. A **"professional firm"** is any individual or sole proprietorship, partnership, corporation, association, or other legal entity permitted by law to practice the professions of law, accounting, actuarial sciences, architecture, engineering or surveying.
24. **"Product"** means any material, supply, equipment or construction item or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such product.
25. **Project.** A **“project”** is any program to secure or provide goods or services, the sale or purchase of which, or the plan to derive revenue therefrom, is pursuant to a contract or written agreement, whether undertaken at the behest of CDTA or in response to an unsolicited proposal.
26. **"Property"** shall mean personal property in excess of five thousand dollars in value, real

property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

27. A **proposal** is a formal written offer to provide goods or services at a specified total or unit cost. In the case of a simplified or sealed invitation for bids, such proposal shall be limited to the bid price along with any bid alternates. In the case of a Request for Proposals, the proposal shall contain such other information and the contractor's offer as shall be considered by CDTA as the basis for award.
28. A **purchase order** is issued by the CDTA to the supplier of goods and/or services and serves as the instrument for the supplier to proceed with the delivery of goods and/or services.
29. A **quote** is an informal offering submitted by a supplier. In the case of "mini" purchases (fixed or annual value reasonably expected to be at least \$2,500 but less than \$15,000) such a quote must be in writing. For micro purchases (reasonably expected to be less than \$2,500) such quote may be written or oral. A purchase order award must ordinarily be made based upon the lowest responsible and responsive bid, although other factors such as delivery schedules are considered in determining responsibility and responsiveness.
30. A **Revenue Contract** is a contract, including leases, concessions, franchises, licenses and other agreements that result in the payment of cash revenue or other valuable remuneration of any sort to CDTA. Such contracts will generally relate to business partnerships where a contractor makes a payment in return for good, services, or the use of CDTA facilities, or access to CDTA markets.
31. A **Solicitation** is a request for offers or proposals, including a telephone request for price quotations, an invitation for bids, or a request for proposals.
32. "**Specification**" means any description of the physical or functional characteristics, or of the nature of a material, supply, equipment or construction item. It may include a description of any requirement for inspecting, testing or preparing a material, supply, equipment or construction item for delivery.
33. A **Term Agreement** shall be a contract with consultants to provide professional services of a specified nature, but without a defined scope, as may be required by the Authority. Services, as needed, will be provided pursuant to the agreement at the rates and under the conditions described in the agreement. The duration of term agreements shall not exceed five years.
34. An **Unsolicited Proposal** is a written offer to enter into a contractual relationship with CDTA or one of its operating subsidiaries that is not provided in response to a specific procurement or revenue project being advanced by CDTA, that may meet CDTA's strategic goals and requirements and submitted to CDTA by a prospective offeror without solicitation by CDTA. Unsolicited proposals must contain provisions for (1) the generation of revenue for CDTA, and/or (2) goods or services that promote the

continuance, further development and improvement of transportation and other services related thereto within the Capital District transportation district, by railroad, omnibus, marine and air. The proposal is submitted by the prospective offeror with the objective of obtaining a contract with CDTA.

- 35. Value of the project.** For the purpose of determining applicable procedures and levels of authority for considering procurement procedures, CDTA will use the greater of either (1) the total investment in the project, (2) the anticipated annual gross revenue of the project less the anticipated annual expenses of the project.

IV. RESPONSIBILITIES

Detailed below are the procurement responsibilities of the various CDTA officers. It is the responsibility of the lead CDTA staff member assigned by the department head to coordinate any specific procurement with the Director of Procurement. Determining “contractor responsibility” and bid responsiveness will fall to the Director of Procurement, in consultation with any staff involved in the process. Determinations will be made in accord with the guidelines contained in Executive Order 170.1 “Establishing Uniform Guidelines for Determining the Responsibility of Bidders” should be followed by the lead CDTA staff member in determining contractor responsibility. This determination should be made before a contract award recommendation is presented. A copy of Executive Order 170.1 can be obtained from the Procurement Office, Deputy Executive Director for Operations, or General Counsel.

A. Board of Directors

The Board of Directors shall be responsible for:

1. Annual review and approval of these procurement guidelines and supporting procedures.
2. Award of contracts that:
 - a) exceed \$100,000, or
 - b) are single bid or sole source awards and exceed \$25,000, or
 - c) staff is recommending award to other than the low bidder and exceed \$25,000, or
 - d) are the result of a Request for Proposals where the reasonably anticipated annual value of the contract is expected to exceed \$50,000;
3. Approval of cumulative contracting change orders resulting in additional payments on Board-awarded contracts that are more than 20% of the awarded contract value or \$50,000, whichever is smaller [If Board approval is granted because of these limits authorization for further change orders is limited once again to 20% or \$50,000, whichever is smaller.]
4. Approval of any contracts involving services to be rendered over a period in excess of one year that are reasonably expected to have an annual value of \$50,000 or more, including all term contracts for professional services.
5. Annual review of all multi-year term contracts for professional services of fixed or indefinite value that are reasonably expected to exceed \$15,000 in annual value.

B. Executive Director

The Executive Director shall be responsible for:

1. Implementation of and compliance with procurement policy and procedures.

2. Within approved budget and appropriated funding limits, doing all things necessary and required to acquire materials, services and equipment needed by CDTA.
3. Awarding contracts that do not require Board approval.
4. Approving contract change orders that do not require Board approval.
5. Executing any and all contracts that are within staff authority levels or that have been approved by resolution by the Board of Directors.

C. Director of Procurement

The Director of Procurement shall be responsible for:

1. Developing and implementing procurement policies and procedures utilizing the Munis system along with overseeing the annual Board approval of the procurement guidelines. In this capacity, the director shall coordinate the activities of an interdepartmental "procurement coordinating" group including, but not limited to, the General Counsel, Contract and Grants Administrator, Audit Assistant, Senior Buyer, Senior Deputy Comptroller, and Manager of Inventory.
2. Coordinating all procurement activities including, supplies, equipment, furnishings, construction, grant related procurements and professional services.
3. Receiving and reviewing purchase requisitions from all departments. Comparing request with departmental/grant budgets then executing purchase or discussing any problem with the department head.
4. Ensuring that purchases comply with all applicable federal, state and local laws and regulations.
5. Performing cost and product comparisons, meeting with vendors, negotiating prices, and making timely purchases to ensure efficient and steady work processes.
6. Placing official notices and advertisements for formal procurements in appropriate publications.
7. Maintaining bidders' lists and ensures that bid packages and addenda are sent to prospective bidders who have, within the last twelve months, expressed interest in a particular type of procurement, or who request an IFB or RFP that is currently pending.
8. Conducting bid openings.
9. Maintaining accurate and complete procurement files.
10. Complying with requirements for utilizing disadvantaged business enterprises for supplies and services.
11. Maintaining contracts/bid packets on file.
12. Serving as the Disadvantaged Business Enterprise (DBE) and Minority and Women-owned business enterprise (MWBE) officer, reporting directly to the Executive Director.
13. Implementation of procedures to secure taxpayer identification numbers, sales tax registration, and enforcement procedures relating to CDTA's "Prompt Payment Policy."
14. Sending out, recording, and evaluating the Uniform Contracting Questionnaire required as a condition precedent to the issuance of contracts valued in excess of \$15,000 per year, reviewing completed questionnaires and certifications, and issuing the required agency certification as to Vendor/Contractor responsibility.
15. Registration of Contractors and Vendors who have expressed a desire to do business with CDTA, classifying these Contractors and Vendors by area of interest, and maintaining the list of registered Contractors and Vendors to be notified in the event of future procurements valued in excess of \$2,500.
16. Compliance with State Finance Law sections 139-j and 139-k by serving as the CDTA point of contact on all procurements, warning Contractors and Vendors about the prohibition against improper contacts, notifying the Ethics Officer in the event of any real or suspected

impermissible contact, and reporting all disclosed contact persons and any impermissible contacts to the Ethics Officer on a monthly basis.

D. General Counsel

The General Counsel shall be responsible for:

1. Formulating contract document forms that comply with applicable state and federal requirements. Is this going to continue to be the case?
2. Reviewing procurement and contract documents for form.
3. Advising staff on changes in laws and requirements that impact procurement practices. Is this going to continue to be the case?
4. Advising the Executive Director on legal matters, including protest procedures.
5. Maintaining an original of contracts and contract change orders on file.
6. Maintaining the current commercial language clauses to satisfy federal and state law procurement requirements. Is this going to continue to be the case?
7. Serving as procurement integrity officer.
8. Serving as Ethics Officer for the purpose of assuring compliance with the prohibition against improper contacts during the procurement process (State Finance Law section 139-j).

E. Deputy Executive Director (DED) of Administration and Finance

The DED of Administration & Finance or his designee within the Accounting Department shall be responsible for:

1. Examining, reviewing and settling all vendor claims with the CDTA and its subsidiary systems and preparing reports required by Public Authority Law Section 2879 and the Economic Development Law.
2. Matching purchase orders, to receiving documents and invoices [to include verification of DBE subcontractor reporting requirements] before processing payment;
3. Processing payments;
4. Maintaining Accounts Payable function;
5. Reporting and disclosing required financial information;
6. Conducting audits of the procurement function, as required.

F. Stock Clerks and Foremen

The Stock Clerks and Foremen are responsible for:

1. Receiving and issuing materials.
2. Stockroom security.
3. Making all necessary entries in Spear system to assure computerized inventory controls.
4. Recommending purchases to ensure an adequate supply of inventory through timely notification of the Director of Procurement.

G. Purchaser or Project Manager

The Purchaser or Project Manager is responsible for:

1. Making timely requests to procure goods and services to the Director of Procurement.

2. Providing sufficient information about the necessary goods or services to the Director of Procurement so that they can be purchased.
3. Formulating specifications for goods or services with sufficient detail and clarity so that they may be competitively procured and expressed in a written contract.
4. Advising the Director of Procurement as to any advisable business needs to be incorporated into the procurement contract. Examples would include performance security and termination provisions when not required by federal law. If the purchaser has questions about this they should direct them to the Director of Procurement before the notice is published.
5. Ensuring that all purchase orders are properly authorized and signed.
6. Approving invoices/progress payments and certifying that the work was actually performed and goods actually received. If it is a single item purchase, this is done by the Project Manager signing the yellow copy of the Purchase Order, and in the case of progress payments this is done by approval of contractor invoices.
7. Notifying the Director of Procurement and the Ethics Officer in the event of any real or suspected impermissible contact about a pending procurement,

H. Contractor Purchases on Behalf of CDTA

CDTA's Procurement Manual, and procurement rules apply only to purchases by contractors that are made on behalf of CDTA. Thus, contractors should secure any and all goods and services that they need to do their work subject only to those requirements set forth in their contract (i.e., prevailing wages or "Buy America"). From time to time, it may be in the Authority's best interest to have a contractor purchase items on behalf of CDTA. The following guidance is offered:

1. Any purchase on behalf of CDTA should, to the extent practical, be included in the contractor's proposal or budget.
2. All materials purchased must be necessary for performance of the contract.
3. All materials with a life beyond the expiration of the contract must be inventoried and returned to CDTA upon the close of the contract in good condition, reasonable wear and tear accepted.
4. CDTA procurement guidelines should be used. State contracts may be used if possible.
5. All purchases in excess of \$5,000 must be explicitly approved by CDTA.

I. Responsibilities of Contractors and Vendors

CDTA values good working relationships with Contractors and Vendors. Contractors and Vendors who desire to do business with CDTA or its subsidiaries, through the submission of bids or proposals in response to CDTA procurement activities, agree to the terms and conditions set forth in the published procurement documents. Contractors and Vendors may express their interest in doing business with CDTA by registering such interest with the Director of Procurement, and, unless a business relationship is created, renewing such registration on an annual basis. Neither registration, nor the acceptance of a bid or a proposal constitutes a determination by CDTA as to the responsibility or qualifications of any Contractor or Vendor. Special attention should be given to the requirements for open competition, the prohibitions on collusion and procurement lobbying (as elsewhere defined), and the requirement for an open and transparent process. Upon the selection of a Contractor or Vendor, CDTA requires adherence to contract terms, including those set forth in the contract specifications and the proposal or bid.

V. GENERAL RULES APPLICABLE TO ALL PROCUREMENTS

A. Procurement File: For each project or procurement that has a value of \$2,500 or more, a procurement file will be created by the Director of Procurement. At a minimum this file will include a copy of the solicitation, a list of those requesting the solicitation, a list of those responding to the solicitation, copies of the price quotes/offers obtained, a memo evaluating the offering and cost suitability, certification that the vendor is not on the Excluded Parties list, a copy of the contract, rationale for method of procurement, selection of contract type, reasons for contractor selection or rejection, basis for contract price, back up for liquidated damage or incentive clauses, on-going contract correspondence, and contract close-out documentation [to include a record of payments made by contractors to DBE subcontractors] as provided for and described in the FTA Best Practices Procurement Manual.

B. Contracting Requirements:

1. **Types of Contracts:** Contracts at CDTA will generally fall into one of eight categories; Revenue Contracts (including franchises, concessions, leases and licenses), Construction and Maintenance, Goods and Commodities, Bus Purchase, Transportation and Operational Services, Technology, or Services and Consultants. In addition, special procedures will be utilized in procurements on behalf of the State of New York. Real estate transactions, such as the purchase of land, or an interest in real estate shall not be governed by these procurement rules. In addition, it is sometimes beneficial for CDTA to enter into a formal agreement with one or more other public entities that involve payments for services. Such arrangements are not CDTA procurements. Contracts may be written for either a fixed price (usually definite quantity or single project), cost reimbursement, time and materials, labor hour contracts, or cost plus fee (fees may be either a fixed or floating amount). The type of fee arrangement will be spelled out in the contract schedules. Where practical, CDTA will engage consultants (architects, engineers, attorneys, accountants, auditors and other learned professionals) pursuant to a Term Agreement. All contracts for services shall have duration of no more than five (5) years.
2. **Contract Forms:** The General Counsel will make contract forms available. These contract forms will address (1) liability and the risk of loss associated with the purchase or the work, (2) required state procurement contract provisions, including termination provisions relating to violation of these provisions and the applicable laws, (3) required federal procurement provisions, and (4) reasonable contract provisions that are desirable for business reasons. Because of the extreme liability concerns raised by construction work in New York, **no construction or building maintenance work shall be undertaken at CDTA facilities without a written contract reviewed and approved by counsel, and proof of necessary insurance obtained by the Project Manager, and reviewed and approved by the General Counsel or Claim Manager.**
3. **Required Provisions:** As a recipient of both State and Federal funds, contracting at CDTA is contingent upon compliance with various state and federal provisions that shall be incorporated by reference into applicable contracts. These required provisions are set forth in documents entitled "Appendix A" for state provisions and "Appendix B" for federal provisions. These appendices are annexed, in their entirety, to the procurement guidelines.

Where possible, abridged versions have been prepared, including only those provisions that are applicable to a specific contract. Where required, the applicable appendix or appendices shall be incorporated by reference into all written procurement contracts.

C. Purchase Orders: Purchase orders will be issued by the Procurement Department upon the award of any contract. **AN APPROVED PURCHASE ORDER IS REQUIRED BEFORE A VENDOR CAN BE INSTRUCTED TO PROVIDE GOODS OR SERVICES.** Executive Director (Alt: Deputy Executive Director) approves Capital Items valued in excess of \$15,000. Other purchases must be approved by Department Head. If the purchase is exclusively for a defined quantity of goods or materials, a purchase order is the only document required. In all cases, the unit prices and quantities reflected on the invoice MUST be identical to those stated on the Purchase Order. Purchase Orders may only be amended to increase the authorized value of the purchase, with the approval of the Department Head and only where there is sufficient justification for the change. ONLY THE AMOUNT AUTHORIZED BY THE PURCHASE ORDER WILL BE PAID, REGARDLESS OF WHAT THE INVOICE MAY SAY!!!

1. Freight Charges: Often charges associated with freight are not known at the time of purchase order creation. To allow for prompt payments to be made the Senior Buyer and Director of Procurement maintain the authority to revise a purchase order upon receipt of an invoice to reflect actual freight charged. To limit unnecessary paperwork a the completion of a PO Change Form is not required.

D. State Procurement “Responsibility” Requirements for Contracts valued at more than \$15,000 per year: CDTA contracts only with vendors and contractors that have a demonstrated ability to perform as promised. For procurements valued in excess of \$15,000 per year, Vendor/Contractor responsibility shall be ascertained through a review of information provided by the Vendor/Contractor following a determination to award a contract. Immediately upon determining the low bidder, or superior proposal for any purchase of goods or services having an annual value of \$15,000 or more, CDTA shall transmit with the notification of the intent to award a contract, a “UNIFORM CONTRACTING QUESTIONNAIRE,” along with instructions directing the completion and return thereof. Until such time as CDTA can ascertain the responsibility of Vendors/Contractor, contract awards shall be contingent upon the responsibility determination. If a Vendor/Contractor has submitted a completed questionnaire within 6 months of the bid date, as long as the information remains unchanged and accurate, only a certified copy of the questionnaire, together with an Affidavit of No Change, must be submitted. Upon return of the completed questionnaire and contractor certification, the Director of Procurement shall review the information and, if satisfied as to the responsibility of the Vendor/Contractor, shall issue an agency certification attesting to satisfaction therewith. Only upon a determination of Vendor/Contractor responsibility, shall the contract for procurement of the desired goods or services be issued.

E. Special Procedures for Procuring Services from a Marketing or from a Professional Firm: The Authority will occasionally use consultant services for the following reasons because (1) There is a necessity for expert services of limited duration to assist in the ongoing mission of the agency, (2) There is a task to be performed to support the mission of the agency for which staff does not have the required technical capability, (3) there is a requirement for work and the staff, although technically capable of performing the work, is not available in the time frame required to do the work, or (4) there is a requirement for independent technical services. To the extent practical, marketing and consulting services will be limited to actual expert services and their expenses.

Tasks such as data collection, although part of the task for which a consultant is engaged, will be performed by staff whenever feasible. Under certain conditions, the staff may enter into a task-order agreement with professional service firms for a limited duration in time. Generally, this will normally be up to three-to five years. Under such an agreement a specific firm or firms is selected to perform services as the need for them arises during the term of the agreement. This type of agreement is most suited to design services and computer services. Marketing consultants may allocate advertising programs valued at more than \$15,000 based upon the considerations customary for that industry.

1. **Guidelines governing procurement:** The requirements of these procurement guidelines govern the selection of services and consultants. Contract award shall be in accord with the stated authority levels so that where there is open competition. The actual selection of consultants will be made through action by the board only where the estimated value of the contract is \$100,000 or more.
2. **Procedures for consultant selection.** The requirements for publication in the New York State Contract Reporter will be followed. The RFP will include a precise description of the work to be performed and criteria for evaluating proposals including the relative weight to be given each factor. CDTA will include an estimate of hours or project budget in the RFP. Each proposal must list the hours of work by job category, direct labor, overhead rates and direct expenses. Interviews may be conducted with some or all of the consultants who submit proposals in accordance with the selection procedure. For each consultant engagement of \$15,000.00 or more, a selection committee consisting of at least three impartial staff members will review and score the proposals.
3. **Required Notices:** In addition to such other notices as may be deemed appropriate, the Authority shall submit a “notice of procurement contract opportunity” to the Commissioner of Economic Development for each proposed consultant services contract publication in the “Procurement Opportunities Newsletter.” (See Article 4-C of Economic Development Law.) Such notice shall contain the following information: (1) Identification of the Authority as the contracting agency; (2) The Contract identification numbers; (3) A brief description of the services sought, where the services are to be provided and the term of the contract; (4) The address where proposals are to be submitted; (5) The date and time when proposals are due; (6) A description of any eligibility or qualification requirement or preference; (7) A statement as to whether the contract requirements may be fulfilled by subcontracting, joint venture or co-production arrangement; (8) The name, address and telephone number of the person to be contacted for additional information; and any other information deemed useful to potential consultants.
4. **Procurement Files:** For each consultant contract, a procurement file will be created. This file will include a copy of the RFP, a list of those requesting the RFP, a list of those responding to the RFP, copies of the proposals submitted, a memo evaluating the capability and cost suitability of the proposal, a copy of the consultant contract, and a rationale for the method of procurement, selection of contract type, reasons for contractor selection or rejection, and basis for contract price.
5. **Sole Source Exceptions:** Procurement of any goods or services by noncompetitive proposals may be used only when the award of a contract is not feasible under mini purchase procedures, small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies: (1) The service is available only

from a single source; (2) The public exigency or emergency 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 goods or services are available from a public entity that derive no profit from the sale as described in Article VII (G) (1). In any sole source procurement a cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required, with the objective being that the amount charges represents "fair and reasonable" compensation for the desired goods and/or services.

6. **Continuing Contracts:** For some types of personal and professional services such as accounting, insurance brokerage, labor negotiations and advertising, the Authority is best served by multi-year agreements. All such multi-year agreements will be reviewed annually. The Authority may from time to time, enter into contracts with optional renewals, but under normal circumstances the contract will not exceed a term of five (5) years unless there is a mid-term assessment as to whether the amounts being charged (or, revenue being generated, for revenue contracts) remain both fair and reasonable.
7. **Means of Procurement:** Services from a professional firm or for marketing services shall be procured primarily on the basis of firm qualifications or experience. Such services shall be procured as follows:
 - a. **"Mini projects"** where the expected annual value is under \$15,000: **Mini purchase** procedures may be employed to procure services from professional firms for any single project where the reasonably estimated value of these services is not expected to exceed \$15,000 for the year in which the procurement takes place. An effort will be made to establish the rates for such services in writing and to demonstrate that the rates are "fair and reasonable."
 - b. **Small procurements** for professional services where the expected annual value of services is \$15,001 to \$99,999: Procurement of a professional firm to provide services such as architecture or engineering where the anticipated annual value for the project is expected to be \$15,000 or more shall be accomplished through a Request for Proposals (RFP) process based upon the qualifications and expertise of the firm. As required by the Brooks Act, such a procurement shall not be based, to any degree, upon the hourly rates of the professional firm, nor, as required by Public Authorities Law section 2879 (b)(iv) will CDTA place any arbitrary restriction on "Allowable indirect costs" of a professional firm; defined as those costs generally associated with overhead which cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific state contract or allowability limits. Upon the selection of a professional firm, based upon qualifications, CDTA shall negotiate the fees of such firm to be charged for any individual project, or to be applicable to any Term Agreement.
 - c. **Marketing procurements** where the expected annual value of services is \$15,001 to \$99,999: The procurement of advertising or marketing services by internal CDTA staff shall be governed by the guidelines applicable to other purchases. Advertising or marketing that involves the purchase of any single advertising campaign with an annual value of

more than \$15,000 and less than \$100,000 per year may be delegated to a marketing firm retained for that purpose. In such cases, the marketing firm shall secure the advertising using the considerations and methods peculiar to this industry to secure the best possible exposure for CDTA.

8. Term Agreements: CDTA will enter into Term Agreements with professional firms that have been determined to be qualified. Where the annual value of a project renders procurement ineligible for “mini purchase” procedures, and no RFP is undertaken, services may be procured from available term contractors. Under such circumstances, the Project Manager shall develop a “program” or detailed scope of work. The Project Manager shall then submit either the program or the detailed scope of work to the Director of Procurement as a way of describing the desired services. The completed program or detailed scope of work shall be submitted to at least two, and preferably three of the available term contractors. The work shall be awarded to the firm submitting the most favorable price proposal.

9. Large Projects valued at \$100,000 or more: An RFP must be used to procure professional services, including architects and engineers, where the anticipated value of the contract is \$100,000 or more. This same requirement applies to marketing campaigns with a total value of \$100,000 or more. When award will be based on factors other than price; the mini purchase or RFP procedures must be used.

F. Promoting and Assisting Participation by minority or women-owned business enterprises (MWBE): CDTA actively encourages the participation of minority or women-owned business enterprises through participation in the FTA disadvantaged business enterprise program (DBE).

G. Procurement contracts that involve former officers or employees of CDTA. Contracting with former officers or employees of CDTA shall be restricted by the provisions of Public Officers’ Law section 73, and 74, and the portion of these guidelines concerning conflicts of interest (IV, D, 2, a), where applicable.

H. CDTA promotes participation by New York state business enterprises: CDTA publishes all procurement opportunities valued at \$15,000 or more in the state procurement opportunities newsletter or State Contract Reporter. As a recipient of federal funds, CDTA is prohibited from giving New York businesses any preference in procurement opportunities, but where funds to finance a procurement are state or local, CDTA will refrain from doing business with business enterprises located in a discriminatory jurisdiction, as provided in Public Authorities Law section 2879. CDTA shall notify the commissioner of economic development of the award of a procurement contract for the purchase of goods or services from a foreign business enterprise in an amount equal to or greater than one million dollars simultaneously with notifying the successful bidder therefor. CDTA shall not thereafter enter into a procurement contract for said goods or services until at least fifteen days has elapsed, except for procurement contracts awarded on an emergency or critical basis, or where the commissioner of economic development waives the provisions of this sentence. The notification to the commissioner of economic development shall include the name, address and telephone and facsimile number of the foreign business enterprise, a brief description of the goods or services to be obtained pursuant to the proposed procurement contract, the amount of the proposed procurement contract, the term of the proposed procurement contract, and the name of the individual at the

foreign business enterprise or acting on behalf of the same who is principally responsible for the proposed procurement contract.

- I. Annual Financial and Compliance Report:** The DED of Administration & Finance shall cause financial and compliance reports to be prepared on annual basis no later than October 1, for the preceding fiscal year. Such report shall summarize the procurement activity of CDTA for the preceding fiscal year, including a listing of all procurement contracts entered into, all contracts entered into with New York state business enterprises and the subject matter and value thereof, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all procurement contracts which were exempt from the publication requirements of article four-C of the economic development law, the basis for any such exemption and the status of existing procurement contracts. Such report on procurement contracts may be a part of any other annual report that the corporation is required to make. Public copies of its report on procurement contracts shall be provided upon reasonable request.
- J. Revenue Contracts:** Consistent with FTA rules, the methods of procurement for revenue contracts shall be the same as those described in this manual for purchase contracts, or requests for proposals (whichever applies). The rules for awarding a revenue contract shall be the same as those spelled out for purchases, except that the means of procurement and authority levels shall be based upon the reasonably anticipated annual value of the revenue to be obtained by CDTA. Thus, where the award is to be based solely upon the revenue proposed, a micropurchase (fair and reasonable), simplified or sealed bid procedure shall be used and the award shall be to the proposal that affords the most revenue over the contract life. Where award is to be based upon factors in addition to revenue, an RFP process shall be used, and solicitation procedures shall be based upon the reasonably anticipated annual revenue value (i.e., if annual revenue is expected to be \$15,000 or more, Contract Reporter publication is required).

VI. PROCUREMENT PLANNING AND TYPES OF CONTRACTING METHODS

A. PROCUREMENT METHODS

CDTA primarily uses six (6) methods of procurement. Five of these methods are defined by the FTA in Circular 4220.1d. CDTA has an additional method because New York State rules on competitive bidding start at \$15,000. There should be open competition among qualified suppliers (in the local area) and no splitting of procurements to avoid competition. For the purpose of these guidelines as provided in New York law, multi-year contracts will use the procedure corresponding to the highest value of the contract for any single year. Procurements without any stated term or complete scope of work shall be based upon the reasonably anticipated value of the procurement for any given year. CDTA will practice these procurement methods or acquire items from state (OGS) or federal (GSA) procurement contracts. CDTA, when required by the state, will acquire items such as office furniture or traffic signs from the New York State, Department of Corrections. **NOTE: LATER IN THIS MANUAL SEE DETAILED STEP BY STEP PROCEDURES TO FOLLOW FOR EACH METHOD DESCRIBED BELOW.** The available methods are:

- 1. Micro Purchases:** Purchases under \$3,000 require one fair and reasonable price. Micro-purchases may be made without obtaining competitive quotations if the price to be paid is fair

and reasonable. The file should contain some support for the conclusion that the price to be paid is fair and reasonable.

2. **Mini Purchases:** The mini purchase method may be used for goods or services costing \$3,000 to \$14,999. Mini purchases exist at CDTA because of the \$15,000 threshold for listing in the New York State Contract Reporter. If mini purchases procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. This procedure requires obtaining only limited competition from an "adequate" number of "qualified" sources (at least two). Solicitations and quotations for mini purchases may be either oral or written but a record of any oral quotations should be created for the procurement file. [Refer to procedures for specific requirements]. Buy America provisions do not apply.
3. **Small Purchases:** The small purchase method may be used for services, supplies, or other property costing \$15,000 to \$100,000. Acquisition of services, supplies or other property that cost less than the federal simplified acquisition threshold, currently fixed at \$100,000 shall be undertaken using this procedure. If small purchases procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources, including written price or rate quotations in response to the required publication in the NYS Contract Reporter. This procedure requires publication of a Notice of Procurement as provided in NY Economic Development Law section 143. This procedure requires obtaining competition from an "adequate" number of "qualified" sources (at least two). Solicitations and quotations for small purchases may be either oral or written but if they are oral, a written record of the quotation shall be created for the procurement file [refer to procedures for specific requirements]. Buy America provisions do not apply.
4. **Formal Sealed Bids or Invitation for Bids (IFB):** The IFB method of procurement is employed for acquisitions over \$100,000.00, when there is:
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders are willing and able to compete effectively for the business;
 - c. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
 - d. No discussion with bidders is needed.

Sealed bidding is the preferred method for any construction project valued at \$15,000 or more with a defined scope of work.

5. **Competitive Negotiations or Requests for Proposals (RFP):** The competitive proposal method is intended to permit competition on quality and other factors as well as on price. It is a good practice to work with counsel to maximize flexibility of the procurement process to be used. The competitive proposal method has many common attributes with the sealed bidding process:
 - a. Like an Invitation for Bids, the Request for Proposals is a written document published to the "world", soliciting the submission of offers in response to the Request.
 - b. The objective is to promote full and open competition.
 - c. The terms and conditions of the solicitation and the resulting contract are spelled out in the Invitation or Request for Proposals (RFP).

- d. If determined necessary, an opportunity is provided (through a pre-bid or pre-proposal conference) for prospective offerors to meet with procuring agency officials to get answers to questions prior to the submission of the bids or initial proposals.
- e. A reasonable amount of time is provided prospective offerors in which to prepare and submit their offers.
- f. Rules are normally provided that specify treatment of offers that are submitted late.
- g. Award will only be made to an offeror determined to be "responsible."

The competitive proposal procurement method (RFP) differs from the sealed bidding process in that:

- a. A complete, adequate and realistic specification or purchase description allowing for competition primarily on the basis of price alone may not be available.
 - b. 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.
 - c. Discussions or negotiations may be needed to address technical requirements as well as proposed cost or price aspects of the offeror's proposal. Discussions may be conducted with one or more offerors who have submitted proposals.
 - d. An opportunity may be given to revise proposals and to submit a final proposal at the completion of the discussion phase of the process.
6. **“Noncompetitive negotiations”** –This formal method of procurement is used infrequently and is the method of procurement used for sole and single source contracts. Sole source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph. *Procurement by noncompetitive proposals 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: (e) the item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced.*

Procurement by noncompetitive proposals 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:

- a. The item is available only from a single source;
- b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c. FTA authorizes noncompetitive negotiations;
- d. After solicitation of a number of sources, competition is determined inadequate; or
- e. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. 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.

- f. The Board chooses to award a sole source contract not using federal funds.

A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required. Before entering into a sole source procurement utilizing federal funds, CDTA must certify in writing to FTA; (a) that such manufacturer or supplier is the only source for such item; and (b) that the price of such item is no higher than the price paid for such item by like customers.

B. TYPES OF CONTRACTS

Procurement is accomplished by purchase order or contract. Contracts may be written for either a fixed price (usually definite quantity or single project), cost reimbursement, time and materials, labor hour contracts, or cost plus fee (fees may be either a fixed or floating amount). The type of fee arrangement will be spelled out in the contract schedules. As provided by state law, Labor and Materials Contracts will only be used after a determination that no other type of contract is suitable and when a contract ceiling is specified. CDTA contracts are typically one of the following six types:

- a. **Construction and Maintenance**- erection or remodeling of a facility or physical plant. Projects funded, in part or in whole, by federal and/or state grants will include all applicable federal (reference Appendix C: TABLE OF FEDERAL CLAUSES) and/or state requirements, including those of the Davis Bacon Act for contracts over \$2,000.00.
- b. **Goods and Commodities**- including materials and supplies - generally considered to be consumable or expendable items (i.e. bus parts, office supplies, cleaning products, fuel, lubricants) as well as equipment that is considered a capital asset (i.e. bus, drill press, lathe, file cabinet)
- c. **Bus Purchase**- includes all vehicles for which federal funding is used and that are subject to bus testing and "Buy-America" requirements, a pre and post award Buy America certification shall be signed for each year of vehicle purchases as well as for any bus purchased on an Option Contract (piggyback) from another agency.
- d. **Transportation and Operational Services**- includes all contracts to provide or operate transportation using vehicles owned by CDTA or the contractor,
- e. **Technology**- specialized computer hardware or software, including any electronic components where development will necessitate a continuing right to the intellectual property to which FTA must have access.
- f. **Services and Consultants**- includes all professional services; (i.e. consultants, CPAs, attorneys, architects, engineers, surveyors). Where practical, CDTA will engage consultants (architects, engineers, attorneys, and other learned professionals) pursuant to a Term Agreement. All contracts for services shall have duration of no more than five (5) years.

C. GRANT REQUIREMENTS

Procurements may or may not utilize grant funds. To be eligible for grant funds you should have included your procurement in the capital budgeting process. Well in advance of the fiscal year, the Capital Program Coordinating Committee prepares and submits a Program of Projects to the FTA which for the most part identifies those acquisitions for which grant funding will be used.

If your procurement is eligible for FTA funding you should complete and submit a Funding Information Form to Grants [see Figure 8] after obtaining pricing information but before a purchase order authorizing the procurement is processed for approval. You should fill out the following sections: vendor price, vendor address, and description of item/services. Grants will complete the balance of the form and forward it for purchase order processing and approval.

In addition, if a grant purchase order requires modification as a result of an approved change order [or for some other reason as detailed in the form] an amendment should be submitted by the Project Manger using PO Change Request Form [see Figure 9].

D. RESTRICTIONS ON CONFLICTS AND LOBBYING:

Consistent with longstanding ethics rules contained in the Public Officers' Law, restrictions on lobbying and CDTA policy, Authority staff engaged in the procurement process shall ensure that the procurement process operates in a way that it is free of conflicts of interest, undue influence, and with qualified contractors in compliance with federal and New York law.

1. Prohibition against improper lobbying influence: Chapter 1 of the Laws of 2005, as amended, commonly referred to as the Procurement Lobbying Law, restricts contacts by offerors that are intended to influence a procurement during the time period commencing when the Authority issues its first written document soliciting a response from offerors through the contract award and approval, defined as the Restrictive Period. Such contacts must only be made to specifically designated persons of the Authority. The Authority is required to collect and record certain information pertaining to such contacts in order to be made part of the procurement record. In addition, the Authority is required to notify offers of the permissible contacts provisions in its solicitation materials and to obtain prior non-responsibility determinations from such offerors. Furthermore, the Authority is required to make determinations of non-responsibility if it is found that any offeror knowingly and willfully made an impermissible contact or failed to timely disclose accurate and complete information or otherwise cooperate in providing the required information. Such determinations of non-responsibility preclude the Authority from awarding the procurement contracts to such offerors. Offerors that are determined to be non-responsible for a second time within a four-year period are rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of 4 years from the date of the second final determination. Lastly, the Authority must report all such findings of non-responsibility to the NYS Office of General Services, which will maintain a publicly available list.
2. An Impermissible Contact is a contact, which is reasonably interpreted as an attempt to influence a procurement, made to someone other than the Designated Contact Person for Procurements during the Restrictive Period. A Permissible Contact is (i) a contact made to anyone, where such contact is not reasonably interpreted as an attempt to influence the procurement or, (ii) a contact that is intended to influence that is made to the Designated Contact Person for Procurements or, (iii) a contact that is intended to influence the procurement made to anyone outside of the Restrictive Period.
3. Designated Contact Person for Procurements

a. The Director of Procurement is designated as the person who may be contacted during the Restrictive Period by offerors where such contact is intended to influence a procurement. However, the Executive Director may from time to time designate another person or persons as the Designated Contact Person(s) for Procurements as he/she may deem necessary or desirable.

b. Procedures for the Recording of Contacts

- (1) All contacts regarding procurements of the Authority should be referred to the Designated Contact Person for Procurements.
- (2) Upon receiving a contact, subsequent to the Authority issuing a written document soliciting a response from offers and prior to the contract being awarded and approved (the Restrictive Period), which is reasonably interpreted as an attempt to influence the procurement, you must obtain the name, address, telephone number, place of principal employment and occupation of the person making the contact and inquire and record whether such person was the offeror or was retained, employed or designated by or on behalf of the offeror to appear before the Authority. Such information should be recorded on the attached Report of Contact form (see attachment #1).
- (3) Such recorded information must be immediately sent to the Designated Contact Person for Procurements for inclusion in the procurement record for such procurement contract and, if applicable, referred to the Ethics Officer for the initiation of an investigation regarding potential violations of the permissible contacts provisions of the Procurement Lobbying Law.

4. Procedures for the Review and Investigation of Alleged Impermissible Contacts:

- a. Any Member, Officer, or Employee of the Authority who becomes aware that an Offeror may have made an impermissible contact shall immediately notify the Ethics Officer.
- b. Upon receipt, the Ethics Officer shall immediately commence an internal review of the allegations to determine if sufficient cause exists to believe the allegation is true.
- c. If sufficient cause does not exist to believe that such allegation is true, the Ethics Officer shall advise the person that reported the allegation of the determination and close the matter. A written report shall be prepared and maintained in the Ethics Officer's files. Such written report shall not be maintained in the procurement record.
- d. If the Ethics Officer determines that sufficient cause exists to believe that such allegations are true, the Ethics Officer shall provide the Offeror with written notification regarding the allegation, including but not limited to, (i) the nature and details of the alleged impermissible contact, (ii) that an investigation has been commenced, (iii) that the Offeror is provided with an opportunity to be heard, (iv) that the Offeror may be represented by an attorney but one is not required, (v) that the Offeror may elect to submit documents rather than appear in person to respond to the allegations, and (vi) a date certain for the Offeror to respond to the allegations. Failure to respond may be deemed a failure to cooperate.

5. Investigation: The exact scope and nature of the investigation depends upon the nature of the allegation. The focus of the investigation will be to determine (i) whether an impermissible

contact occurred, (ii) whether the contact was made by the Offeror (offerors include employees, agents, consultants, or any other person acting on the Offeror's behalf), and (iii) whether the Offeror knowingly and willfully violated the permissible contact provisions.

6. Required Notices

- a. To Offeror: The Authority must incorporate a summary of the policy and prohibitions regarding permissible contacts during a procurement as well as copies of all rules, regulations and guidelines concerning permissible contacts into the authority's solicitation of proposals or bid documents or specifications for all procurements. Such information should be provided in substantially the same form as the attached (see attachment #2).
- b. From the Offeror: CDTA must seek written affirmation from all offerors as to the offeror's understanding of and agreement to comply with the Authority's procedures relating to permissible contacts. Such affirmation should be provided in substantially the same form as the attached (see attachment #3).
- c. CDTA require offerors to disclose findings of non-responsibility due to violations of the permissible contacts provisions or the intentional provision of false or inaccurate information to a governmental entity within the previous 4 years in the entity's solicitations for proposals. Such disclosure should be provided in substantially the same form as the attached (see attachment #4).

7. Certifications: All procurement contract awards must require offerors to certify that all information provided to the Authority is complete, true and accurate. Such certification should be provided in substantially the same form as the attached (see attachment #5).

8. Findings and Results:

- a. The failure of the offeror to timely disclose accurate and complete information or otherwise cooperate with the Authority must be considered in the Authority's determination of responsibility. The Authority shall not award a contract to an offeror who fails to timely disclose accurate and complete information or otherwise cooperate with the Authority unless the Authority finds that the award is necessary to protect public property or public health or safety, and that the offeror is the only source capable of supplying the required article of procurement within the necessary timeframe. The Authority entity must include in the procurement record a statement describing the basis of the finding.
- b. A finding that an offeror has knowingly and willfully violated the permissible contact provisions shall result in a determination of non-responsibility for such offeror and such offeror shall not be awarded the procurement contract unless the Authority finds that the award is necessary to protect public property or public health or safety, and that the offeror is the only source capable of supplying the required article of procurement within the necessary timeframe. The Authority must include in the procurement record a statement describing the basis of the finding. Any subsequent finding of non-responsibility due to a violation of the permissible contacts provisions within 4 years of a determination shall result in the offeror being rendered ineligible to submit a proposal on or be awarded any

procurement contract for a period of 4 years from the date of the second final determination for any procurement contract (Debarment).

9. Reporting: Upon a finding of non-responsibility or debarment, the Authority shall notify the New York State Offices of General Services, which maintains a publicly available list.
10. Federal Requirements on lobbying (31 USC 135249 CFR Part 1949 CFR Part 20): FTA Lobbying requirements apply to Construction/Architectural and Engineering/Professional Service Contract/Operational Service Contract/Turnkey contracts valued at \$100,000 or more. FTA requires that all such contracts contain the required clause and have the necessary certification. Mandatory Clause/Language- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

VII. PROCUREMENT PROCEDURES

All procurement activity with the exception of the Petty Cash procedures shall be channeled through the Director of Procurement or her designee. These procurement procedures provide the detailed instructions for staff to follow, when conducting procurement. On federally funded projects, the Federal Transit Administration requires procurement protest procedures. The Albany Storeroom is the receiving center for goods purchased. Modifications, additions and deletions are made to procedures to comply with changes in laws, regulations and Board policy.

For the purpose of these guidelines as provided in New York law, multi-year contracts will use the procedure corresponding to the highest value of the contract for any single year. Procurements without any stated term or complete scope of work shall be based upon the reasonably anticipated value of the procurement for any given year.

PROCEDURE 1 - Petty Cash

PROCEDURE 2 - Micro Purchases (under \$3,000)

PROCEDURE 3 - Mini Purchases (\$3,000-\$14,999)

PROCEDURE 4 - Small Purchases (\$15,000-\$99,999)

PROCEDURE 5 - Sealed Bid/Invitation for Bids (IFB including ALL procurements for \$100,000 or more where award will go to the lowest responsible and responsive bidder)

PROCEDURE 6 - Request for Proposals (RFP)/Competitive Negotiations

PROCEDURE 7 - Sole or Single Source (Non-Competitive Negotiations)

PROCEDURE 8 – Environmentally Preferred Purchases

PROCEDURE 9 – Unsolicited Proposals for Public-Private Partnerships and Projects

PROCEDURE 10 – Purchasing Card

A. PROCEDURE 1 - Procedure 1 – Petty Cash

For procurements valued at \$50.00 or under: Petty cash funds are maintained by the CDTA and its related systems to procure locally small items and services costing up to \$50.00 that are business related and not of a personal nature or use. The individual funds and their transaction limits are as follows:

	<u>LOCATION</u>	<u>FUND VALUE</u>	<u>TRANSACTION LIMIT</u>
CDTA & CDTS#1	- Albany	\$500.00	\$50.00
CDTS#1	- Troy	\$200.00	\$50.00
CDTS#1	- Schenectady	\$200.00	\$50.00
CDTA	- RRS	\$200.00	\$50.00

- 1. CDTS #1 and CDTA – Petty Cash:** A request for items or services costing \$50.00 or under is made to an individual department head, the Executive Director or an individual’s immediate supervisor. Upon review and concurrence of the request, the department head completes the petty cash form (see Exhibit #1), approves the request and retains the yellow copy. If an advance is to be given, the white copy is presented to the Treasury Supervisor, who will issue funds for the amount specified on the form with the expectation that a valid receipt will be provided after the funds are expended. If a reimbursement is to be made, the completed form and receipt are presented to the Treasury Supervisor who will issue the funds. In all cases, the person receiving funds should sign the petty cash form as the receiver of petty cash. Upon completion of the transaction, all petty cash forms, receipts and change are returned to the Treasury Supervisor.
- 2. Access Transit, Troy and Schenectady – Petty Cash:** The petty cash fund is held by the Superintendent/General Manager who fills out the forms and approves the request for items or services costing \$50.00 or under. The completed form and receipt must be presented for reimbursement. Upon completion of the transaction, all petty cash forms, receipts and change are returned to the Superintendent/General Manager. The Superintendent/General Manager is responsible for reconciliation and administration of the Petty Cash fund.
- 3. Reconciliation:** The above petty cash funds will be forwarded to the Accounting department for review and approved by the Comptroller or his/her designee for replenishment. As replenishments are made, the Deputy Comptroller/ Accounting will charge the various expenses to the proper accounts such as travel, Roadeo, awards, supplies, and so on.

For all petty cash funds listed above, a receipt must accompany the petty cash form or reimbursement of funds will not be made until a valid receipt is obtained. The Petty Cash funds listed above can be used to reimburse mileage expenses at the existing mileage reimbursement rate and may be used to reimburse gasoline, tolls and parking expenses at the \$50.00 or under limit. However, reimbursements for other travel expenses such as meals, hotel accommodations, airfare, train and bus travel will not be reimbursed from the petty cash fund. These types of travel expenses will be reimbursed via regular travel expense reimbursement procedures. In addition, requests for material or services costing more than the \$50.00 limit shall not be charged to the petty cash account but should be vouchered, approved and charged to the proper expense accounts.

Petty cash fund audits are the responsibility of the Comptroller or his/her designee. Each petty cash fund shall be audited at least quarterly. Overages and shortages discovered either during an audit of the fund or when requesting replenishment of the fund by the custodian will be documented and investigated by the Comptroller as to the amount and likely reason for occurrence. Overages shall be returned to the Accounting Department while situations resulting in shortages will be discussed with the petty cash fund custodian and his/her immediate Department Head in order to avoid future repetition of any shortages.

Further, when a petty cash box custodian at any division is going to be on an extended absence, such as vacation, the petty cash box shall be counted and all receipts submitted to Accounting for reimbursement before leaving. A copy of this procedure shall be provided to the designated custodian and reviewed with that person by the custodian so that the designee has a clear understanding of the funds held in the box and the responsibilities associated with maintaining it. If the extended absence is unexpected, such as illness, the Comptroller will assume this responsibility. Upon the return of the custodian, the petty cash box shall be reviewed again.

B. PROCEDURE 2 - Micro Purchases

1. Requirements: Purchases under \$3,000 require just one “fair and reasonable” price. Micro-purchases may be made without obtaining competitive quotations if the price to be paid is fair and reasonable. The file should contain support for the conclusion that the price to be paid is fair and reasonable. This support may be documentation that the purchaser shopped multiple locations or obtained verbal quotes that show a purchase price that was reasonable; generally the lowest price for goods that are ready for immediate delivery.

2. Purchase Orders: Purchase orders will be issued. **AN APPROVED PURCHASE ORDER IS REQUIRED BEFORE A VENDOR CAN BE INSTRUCTED TO PROVIDE GOODS OR SERVICES. Executive Director (Alt: Deputy Executive Director) approves Capital Item; other purchases must be approved by Department Head.** If the purchase is exclusively for a defined quantity of goods or materials, a purchase order is the only document required. **In all cases, the unit prices and quantities reflected on the invoice MUST be identical to those stated on the Purchase Order. Purchase Orders may only be amended to increase the authorized value of the purchase, with the approval of the Department Head and only where there is sufficient justification for the change. ONLY THE AMOUNT AUTHORIZED BY THE PURCHASE ORDER WILL BE PAID, REGARDLESS OF WHAT THE INVOICE MAY SAY(With the exception of possible additions of freight charges.)!!!**

3. Price Competition: Assuring adequate price competition for various types of contracts is accomplished and shall be documented as follows:

- a. Construction and Maintenance:** A single quote or proposal is all that is required, but the purchaser/project manager must be prepared to show that the price was fair and reasonable. This may be established by getting multiple proposals or quotes. It is also sufficient to document reasonableness by citing examples of similar work recently done for CDTA where there were multiple quotes. Quotes or proposals at this price level may be verbal, but should be documented. This is the only type of small purchase that will require a written contract more extensive than a purchase order. The appropriate agreement is posted and available for use. Provisions like the Davis Bacon Act apply to contracts over \$2,000.00.

- b. Goods and Commodities: Multiple quotes or list prices or advertisements for the product purchased are required. Fax and/or phone quotes for bus parts are solicited from bus part suppliers. The Procurement Office keeps quotes on file.
- c. Bus Purchase: bus prices will not be eligible for micro purchase.
- d. Transportation and Operational Services: In the event of an extremely short-term agreement for these services, multiple quotes are required or it must be shown that the quoted rate is comparable to the rates generally charged for such services. This may be documented by reference to similar agreements
- e. Technology: Multiple quotes, or reference to available list prices or advertised prices for the technology product are required.
- f. Services and Consultants: In the event of an extremely short-term agreement for these services, multiple quotes are required or it must be shown that the quoted rate is comparable to the rates generally charged for such services. This may be documented by reference to similar agreements

4. **Procedure:** Micro purchases should follow this format:

- a. Receive requirement and ensure funds are available
- b. Obtain a price or quotation from a vendor/supplier
- c. Make determination that price is fair and reasonable
- d. Place Order after purchase order is approved/signed

5. **Price Splitting:** Purchases shall be equitably distributed among qualified suppliers and purchases shall not be split to avoid the requirements of competition for purchases above the micro purchase threshold.

C. PROCEDURE 3 - Mini Purchases

1. **Requirements:** Mini Purchases (\$3,000 to up to \$14,999) - Mini purchase procedures are those relatively simple, informal procurement methods for procuring services, supplies or other property costing less than \$15,000.00. Both the solicitation and the bids/quotes/proposals may be oral or in writing. Advertising is not required. At least three firms must be considered or solicited unless it can be shown that there are only two vendors/contractors available. If the bids/quotes/proposals are oral, a written record must be created and retained in the procurement file. Bids/quotes/proposals must be obtained from an adequate number of qualified sources (at least two). Alternately, for professional services, it may be demonstrated that the prices quoted are reasonable in relation to similar current or recent projects.

2. **Purchase Orders:** Purchase orders will be issued. **AN APPROVED PURCHASE ORDER IS REQUIRED BEFORE A VENDOR CAN BE INSTRUCTED TO PROVIDE GOODS OR SERVICES. Executive Director (Alt: Deputy Executive Director) approves Capital Item, other purchases must be approved by Department Head.** Copies of written quotations must be kept on file in the Procurement Office (attached to pink copy), or attached to the Accounting Departments purchase order copy. **In all cases, the unit prices and quantities reflected on the invoice MUST be identical to those stated on the Purchase Order. Purchase Orders may only be amended to increase the authorized value of the purchase, with the approval of the Department Head and only where there is sufficient justification for the change. ONLY THE AMOUNT AUTHORIZED BY THE PURCHASE ORDER WILL BE PAID, REGARDLESS**

OF WHAT THE INVOICE MAY SAY(With the exception of possible additions of freight charges.)!!! Payment will be made pursuant to CDTA's Prompt Payment Policy.

- 3. Price Competition:** Unless otherwise indicated, at least two (2) bids/quotes/proposals must be obtained. For professional services, it may be demonstrated that the prices quoted are reasonable in relation to similar current or recent projects. Documentation on file in the procurement office is required for less than three explaining why only two bids/quotes/proposals were obtained. Valid explanations will include documentation that additional prices were sought and an explanation obtained as to why there are only two.

Written bids/quotes/proposals (preferably unopened) shall be reviewed and seen by only the Director of Procurement and the Purchaser/Project Manager until the deadline for bids/quotes/proposals. Early disclosure of bids/quotes/proposals before the deadline is expressly forbidden because it would compromise the competitive process. In the event that such information is disclosed the procurement process will be re-initiated and the matter referred to the General Counsel.

Assuring adequate price competition for various types of contracts is accomplished as follows:

- a. Construction and Maintenance:** Multiple proposals or quotes are required. These must be in writing. Because of liability concerns, this is the only type of mini purchase that will require a written contract more extensive than a purchase order. The appropriate agreement is posted and available for use. Provisions like the Davis Bacon Act apply.
 - b. Goods and Commodities:** Multiple bids/quotes or list prices or advertisements for the product purchased are required and must be documented. If bids/quotes are oral, a written record will be created and maintained in the procurement file. Fax and/or phone quotes for bus parts are solicited from bus part suppliers. Quotes/prices for items that are regularly purchased (such as bus parts) are kept on file by the Procurement Office.
 - c. Bus Purchase:** bus purchases will not be eligible for mini purchase.
 - d. Transportation and Operational Services:** Multiple quotes are required or it must be shown that the quoted rate is comparable to the rates generally charged for such services. This may be documented by reference to similar agreements.
 - e. Technology:** Multiple quotes, list prices or advertised prices for the technology product are required.
 - f. Services/Consultants and Marketing Projects: (special procedure)** This procedure may be used for single assignments or jobs where the annual value of the consultant's services on any single project are not reasonably expected to exceed \$15,000 in a single year. In order to justify the reasonableness of the charges, there must be documentation to the effect that the charges being made on this mini purchase do not exceed those that are generally acceptable for such services. It must be shown that the quoted rate is comparable to the rates generally charged for such services. This may be supported by multiple quotes, or by a memo documenting similar agreements that are currently in effect. Such documentation should include a reference to the hourly rates being charged, or to the estimated time and materials for a defined service.
- 4. Use of State and Federal GSA Contracts:** CDTA may purchase items on the competitively bid State Contract without soliciting bids or proposals up to the \$100,000.00 limit. The availability of the item and the urgency of the need are considered in conjunction with the price. New York, Office of General Services (OGS) contract numbers shall be included on purchase orders as a

reference number. The CDTA may also utilize federal GSA contract procurement in a similar manner.

5. **Purchases from Preferred Sources:** As provided by State Finance Law section 162, CDTA will procure from certain sources that have been designated by the Office of General Services, provided that the goods and/or services provided by the preferred source meet required levels of form, fit and functionality, and provided that the price quoted by the preferred source does not exceed by more than 15% the prevailing market price as determined by CDTA. In such instances where a preferred source for the necessary goods and/or services is known to exist, that source will be given an opportunity to submit a price quote at least ten days before the procurement is otherwise put out for bid. CDTA reserves the right to bid out procurements for the purpose of ascertaining the prevailing market price, but will contract with the preferred source if and when the price quote of the preferred source comes in within 15% of what is determined to be the prevailing market price. ”.

D. PROCEDURE 4 – Small Purchases

1. **Requirements:** Small Purchases (\$15,00.00 to up to \$100,000.00). This is the point at which **publication** of the procurement is required by NY state law (EDL 143). For this type of procurement, the NYS Contract Reporter shall be the Official Publication for CDTA, and publication elsewhere is optional. Solicitations must include any vendor/contractor that responds to publication, and must include any vendor/contractor that has requested notification of such procurements. In addition, employees are encouraged to provide the solicitation to any prospective vendor/contractor.

Where the procurement involves something as complex as construction, transportation and operational services, bus purchase, or contracts for services, both the solicitation and the quotes/bids/proposals are required to be in writing. FTA Best Practices, permit both solicitations and bids/quotes/proposals to be either written or oral (section 4.2). For policy reasons CDTA will accept verbal solicitations and quotes only for simple purchases of a designated technology product, other product or commodity. Multiple bids/quotes/proposals must be procurement obtained from an adequate number of qualified sources (at least two).

2. **Purchase Orders:** Purchase orders will be issued. Copies of written quotations must be kept on file in the Procurement Office (attached to pink copy), or attached to the Accounting Departments purchase order copy. **In all cases, the unit prices and quantities reflected on the invoice MUST be identical to those stated on the Purchase Order. Purchase Orders may only be amended to increase the authorized value of the purchase, with the approval of the Department Head and only where there is sufficient justification for the change. ONLY THE AMOUNT AUTHORIZED BY THE PURCHASE ORDER WILL BE PAID, REGARDLESS OF WHAT THE INVOICE MAY SAY(With the exception of possible additions of freight charges.)!!!** Payment will be made pursuant to CDTA’s Prompt Payment Policy.

3. **Price Competition:** Where oral bids/quotes/proposals are permissible a written record will be created and placed in the procurement file. Otherwise, written bids/quotes/proposals are required. Any sealed bids are to be identified as bids by the bidder and shall be retained, unopened, until the date and time designated for bid opening. At least two (2) bids/quotes/proposals must be obtained. Documentation on file in the procurement office is required for less than three explaining why only two bids were obtained. Valid explanations will include documentation that additional prices were

sought and an explanation obtained as to why there are only two bids/quotes/proposals. In the event that bids/quotes/proposals have been obtained informally, the Director of Procurement shall simply prepare a bid summary and certify the results. Sealed bid opening (where specified in a solicitation) shall be public and the Director of Procurement shall read the bids and prepare a bid summary and certify the results. Early opening or disclosure of bids before the deadline is expressly forbidden because it would compromise the competitive process. In the event that such information is disclosed the procurement process will be re-initiated and the matter referred to the General Counsel.

Assuring adequate price competition for various types of contracts is accomplished as follows:

- a. Construction and Maintenance:** Multiple written bids/proposals are required. These must be in writing. Contracting requirements are more extensive for projects valued at \$15,000 or more. Provisions like the Davis Bacon Act apply and the insurance requirements are more stringent. Contract forms have been posted. AIA terms may be included if desired.
 - b. Goods and Commodities:** Multiple bids/proposals are required for the product purchased. These may be in writing, or oral, but where communicated orally, a record will be created. Fax and/or phone quotes for bus parts are solicited from bus part suppliers. Quotes/prices for items that are regularly purchased (such as bus parts) are kept on file by the Procurement Office.
 - c. Bus Purchase:** Bus purchases will be based upon the total number of buses purchased pursuant to contract, so a small purchase is unlikely. In the event that specific bus procurement falls within this type of procurement, at least two sealed bids will be required.
 - d. Transportation and Operational Services:** Multiple bids/quotes/proposals are required. These must be in writing.
 - e. Technology:** Multiple quotes are required. These may include state contract prices for the technology product desired. Bids/quotes/proposals may be in writing, or oral, but where communicated orally, a record will be created.
 - f. Services and Consultants:** For services other than professional services multiple bids/quotes/proposals are required. Proposals must be in writing. The small purchase procedure may only be used for services and consultants where the award will be exclusively on the basis of price. For professional services, including architects and engineers, where award will be based on factors other than price, the mini purchase or RFP procedures must be used. Where professional services are being procured pursuant to a Term Contract, multiple quotes/proposals shall be obtained from the available term contractors, and the lowest-cost proposal accepted.
- 4. Use of State and Federal GSA Contracts:** CDTA may purchase items on the competitively bid State Contract without soliciting bids or proposals up to the \$100,000.00 limit. The availability of the item and the urgency of the need are considered in conjunction with the price. New York, Office of General Services (OGS) contract numbers shall be included on purchase orders as a reference number. The CDTA may also utilize federal GSA contract procurement in a similar manner.
- 5. Purchases from Preferred Sources:** As provided by State Finance Law section 162, CDTA will procure from certain sources that have been designated by the Office of General Services, provided that the goods and/or services provided by the preferred source meet required levels of form, fit and functionality, and provided that the price quoted by the preferred source does not exceed by more than 15% the prevailing market price as determined by CDTA. In such instances where a preferred source for the necessary goods and/or services is known to exist,

that source will be given an opportunity to submit a price quote at least ten days before the procurement is otherwise put out for bid. CDTA reserves the right to bid out procurements for the purpose of ascertaining the prevailing market price, but will contract with the preferred source if and when the price quote of the preferred source comes in within 15% of what is determined to be the prevailing market price.

E. PROCEDURE 5 - Sealed Bid/Invitation for Bids (IFB)

1. Requirements: (Required for procurements with fixed specifications valued at \$100,000 or more). This procurement method may be employed when there is: (a) a complete, adequate, and realistic specification or purchase description; (b) two or more responsible bidders are willing and able to compete; (c) the procurement lends itself to a firm fixed price contract; (d) the selection can be made primarily on the basis of price; (e) no discussion with bidders is needed after receipt of offers. This method is mandatory for procurements where these factors exist and where the contract value is reasonably anticipated to be \$100,000.00 or more.

a. Bidding Requirements: Publication of an IFB is required by NY state law (EDL 143) and by the FTA. Publication in the NYS Contract Reporter is required along with publication in at least one other Official Publication. Solicitations must include any vendor/contractor that responds to publication, and must include any vendor/contractor that has requested notification of such procurements. In addition, employees are encouraged to provide the solicitation to any prospective vendor/contractor. Both the Invitation for Bids and the bids are required to be in writing. Bid bonds may be required. Multiple bids/proposals must be obtained from an adequate number of qualified sources (at least two).

b. Bids: Written bids/quotes/proposals are required. Sealed bids are to be identified as bids by the bidder and shall be retained, unopened, until the date and time designated for bid opening. At least two (2) responsive bids/proposals must be obtained. Sealed bid opening shall be public where the Director of Procurement shall read the bids aloud and prepare a bid summary and certify the results. Early opening or disclosure of bids before the deadline is expressly forbidden because it would compromise the competitive process. In the event that such information is disclosed, the procurement process will be re-initiated and the matter referred to the General Counsel.

2. Purchase Orders: Purchase orders will be issued. Copies of written quotations must be kept on file in the Procurement Office (attached to pink copy), or attached to the Accounting Department's purchase order copy. **In all cases, the unit prices and quantities reflected on the invoice MUST be identical to those stated on the Purchase Order. Purchase Orders may only be amended to increase the authorized value of the purchase, with the approval of the Department Head and only where there is sufficient justification for the change. ONLY THE AMOUNT AUTHORIZED BY THE PURCHASE ORDER WILL BE PAID, REGARDLESS OF WHAT THE INVOICE MAY SAY!!!** Payment will be made pursuant to CDTA's Prompt Payment Policy.

3. Price Competition: Assuring adequate price competition for various types of contracts is accomplished as follows:

- a. **Construction and Maintenance:** Multiple written bids/proposals are required. Bids must come from responsible bidders and be responsive. For contracting extensive state and federal provisions apply and the insurance requirements are more stringent. Contract forms have been posted. Appendix A and Appendix B must be used. AIA terms with supplemental conditions will generally be included.
 - b. **Goods and Commodities:** Multiple bids/proposals are required for the product purchased. Bids must come from responsible bidders and be responsive. Bids must be submitted in the form and manner prescribed in the IFB. For contracting extensive state and federal provisions apply and the insurance requirements are more stringent. Contract forms have been posted. Appendix A and Appendix B must be used.
 - c. **Bus Purchase:** Multiple written bids/proposals are required. Bids must come from responsible bidders and be responsive. Bids for buses must conform to the requirements set forth in the IFB/RFP except to the extent that they propose to furnish “approved equals.” At least two sealed bids will be required. For contracting, extensive state and federal provisions apply and the insurance requirements are more stringent. Contract forms have been posted. Appendix A and Appendix B must be used.
 - d. **Transportation and Operational Services:** Procurements of this type will generally be the subject of an RFP because factors other than price will need to be considered as a basis for an award. Where this method is used, multiple written bids/proposals are required. Bids must come from responsible bidders and be responsive. Extensive state and federal provisions apply and the insurance requirements are more stringent. Contract forms have been posted. Appendix A and Appendix B must be used.
 - e. **Technology:** Multiple written bids/proposals are required. Bids must come from responsible bidders and be responsive. Extensive state and federal provisions apply and the insurance requirements are more stringent. Contract forms have been posted. Appendix A and Appendix B must be used.
 - f. **Services and Consultants:** Where selection is based exclusively on price, an IFB for services requires multiple bids/quotes/proposals. Proposals must be in writing. The IFB procedure may only be used for services and consultants where the award will be exclusively on the basis of price. For professional services, including architects and engineers, where award will be based on factors other than price, the mini purchase or RFP procedures must be used. Extensive state and federal provisions apply and the insurance requirements are more stringent. Contract forms have been posted. Appendix A and Appendix B must be used.
 - g. **Purchases from Preferred Sources:** As provided by State Finance Law section 162, CDTA will procure from certain sources that have been designated by the Office of General Services, provided that the goods and/or services provided by the preferred source meet required levels of form, fit and functionality, and provided that the price quoted by the preferred source does not exceed by more than 15% the prevailing market price as determined by CDTA. In such instances where a preferred source for the necessary goods and/or services is known to exist, that source will be given an opportunity to submit a price quote at least ten days before the procurement is otherwise put out for bid. CDTA reserves the right to bid out procurements for the purpose of ascertaining the prevailing market price, but will contract with the preferred source if and when the price quote of the preferred source comes in within 15% of what is determined to be the prevailing market price.
4. **Preparation of Bid Package:** The IFB procurement documents will generally be organized into five (5) sections: 1) Information for Bidders, 2) Required Forms, 3) the agreement with Required Contract Clauses, and 4) the technical specifications/scope of work, 5) bid.

- 5. Procurement Advertising For Bids:** The Director of Procurement will secure advertising for all invitations for bid. For procurements with an expected value of \$15,000 or more, the legal notice for bids is published in the “New York State Contract Reporter” and at least one of the newspapers, that have been designated “official” by the CDTA. For procurement contracts estimated to be \$1.0 million or more, the NYS Department of Economic Development will also be contacted to obtain listings of NYS business enterprises. For items requiring national competition, the ad may also be placed in appropriate trade magazines or anywhere else that the Director of Procurement deems likely to encourage bids and competition. Affidavits of publication are provided by newspapers, which are proofed and retained on file by the Accounts Payable Clerk. The “Notice to Bidders” is also directly mailed to those firms with a known expertise in the area of interest and those who have been asked to be placed on the bidders’ list. The “Notice to Bidders” must appear in the official newspapers in advance of the stipulated due date for proposals. The New York State Contract Reporter stipulates minimum days. Affidavits, certificates, insurance and bond requirements, which will be used to bind the procurement, are provided to all bidders as inclusions in the bid package. Bidders may be required to submit a bid deposit, usually in the amount of 5% of the bid.
- 6. Pre-Bid Conference:** When the proposed contract is for large purchases or construction, a pre-bid conference is normally held about two (2) weeks before the bid opening. This is an opportunity for prospective bidders to ask questions about the plans, the specifications and the commercial language requirements.
- 7. Addenda:** Changes in the procurement as a result of the pre-bid conference or that are initiated at the discretion of the CDTA will be provided to all prospective bidders in the form of Addenda.
- 8. Bid Opening:** Bid openings are open to the public. On the advertised day and at the scheduled time, the bids will be opened and read aloud, stating the name of the bidder and the amount of the bid. The Director of Procurement or her designee will enter each bid and the amount of the bid deposit on a bid tabulation sheet that she will sign and certify. Bids, that are received after the scheduled time of bid opening, must be returned to the bidders unopened. Observers at the bid opening should be advised to take notes if they want an instant record of the proceedings, and to so state, if they want to be provided with an official copy of the bid tabulation. No copies of the bid tabulation are provided at the bid opening, nor can any comments be made about the probability of award. If requested, an observer is permitted to look at bid(s), but is not permitted to handle bids at the time of bid opening. A typical bid tabulation is shown as Exhibit #4.
- 9. Contract Award:** The following measures will be taken to support any contract award in response to an IFB.
- a. Bids reviewed: After the bid opening, the Project Manager/Contracting Officer reviews the bid documents to determine the lowest responsive and responsible bidder. The Project Manager/Contracting Officer will determine the responsibility of the lowest bidder. The Purchaser and Director of Procurement shall determine the responsibility.
 - b. Non-responsive and non-responsible bids shall be rejected. Late bids shall be returned to the bidder unopened. At all times the CDTA retains the right to reject any or all bids.
 - c. Withdrawals: The low bidder with the concurrence of the Executive Director may be allowed to withdraw provided the bidder can identify and demonstrate an error in the bid.

- d. Award: Award will be made by the Director of Procurement of any contract valued at less than \$100,000 based upon the lowest responsive bid from a responsible bidder. The Director of Procurement will make award recommendations to the CDTA Board of Directors for those contracts that require Board approval.
- e. Notification: The apparent low bidder will be notified in writing of the intent to award, subject to the bidder's ability to meet the requirements of the IFB including contract requirements.
- f. Determination of Contractor Responsibility: Contract awards based upon a contractor submitting a low bid shall be contingent upon the Vendor/Contractor submitting satisfactory evidence of financial responsibility. Such evidence may take one of the following forms: (1) audited financial statements and a certificate of responsibility from the contractor, (2) a previous financial disclosure dating from no more than six months prior to the IFB, combined with a certification from the Vendor/Contractor, or (3) a completed Contractor Responsibility Questionnaire form and certification from the contractor.
- g. Contract Execution: Before the contractor can begin work, it must comply with the bid requirements by completing, executing and returning the contract that was included with the IFB.
- h. Notice to Proceed: After the contract has been formally awarded by the CDTA, signed and returned with all necessary documentation (i.e. insurance certificates, performance bond, etc.) the contractor is notified by the Project Manager to submit the signed agreement original(s) together with any commercial requirements (e.g., bonds, insurance certificates). Notices to proceed are signed by the Project Manager or his designee.

F. PROCEDURE 6 - Request for Proposals (RFP)/Competitive Negotiations

1. Requirements (defined): The RFP method of procurement must be used for the acquisition of services costing \$15,000 or more (annual value for multi-year agreements) and may be used for other purposes where the decision to award will be based upon factors other than price (some revenue vehicles or computer communications system technology). The RFP method is used when: (a) a complete, adequate, and realistic specification or purchase description is difficult to define; (b) the project is better described as a "scope of work"; (c) two or more responsible proposers are willing and able to compete; (d) the contract may be firm fixed price or some other type (e.g., cost plus fixed fee); (e) the selection can not be made solely on the basis of price; and (f) Negotiations may be required with proposers after receipt of proposals. The RFP method of procurement lists in relative order evaluation factors that include responsibility factors and technical factors.

2. Preparation of Request for Proposals (RFP): The RFP procurement documents will be organized into five (5) sections: (1) Information for proposers, (2) Required Forms, including sufficient data to determine the responsibility of the proposer, (3) Required Contract Clauses, (4) the agreement, and (5) the scope of work or specifications.

- a. **Scope of work or specifications and any special terms and conditions (5 above):** Preparation of the scope of work or specifications, and any special terms and conditions is the responsibility of the department requesting the procurement working with the Director of Procurement.
- b. **Required Contract Clauses and Agreement: (3-4 above):** Counsel is responsible for advising as to all state and federal requirements governing the procurement and will provide contract

forms and appendices to be used, where appropriate. Counsel will also advise and require in such forms all necessary indemnity and insurance provisions. The Director of Procurement and/or purchaser must consult with counsel concerning any optional provisions that they want to have included in the procurement as a contract requirement. Examples of optional provisions include termination provisions, performance security, and AIA provisions (including supplemental conditions). Please note that inclusion of AIA provisions will require form preparation by a licensed architect.

- c. **Information to Proposers and Required Forms:** The Director of Procurement will prepare the required notices, instructions and proposal forms that are included in the RFP. Purchasers must obtain authorization to purchase, and work with the Director of Procurement to formulate the scope of work, specifications and summary of the RFP.
- 3. **Advertising for an RFPs:** Publication of an RFP is required by NY state law (EDL 143) and the FTA where the contract value is reasonably anticipated to be \$15,000 or more on an annual basis. Publication in the NYS Contract Reporter is required along with publication in at least one other Official Publication. Solicitations must include any vendor/contractor that responds to publication, and must include any vendor/contractor that has requested notification of such procurements. In addition, employees are encouraged to provide the solicitation to any prospective vendor/contractor.

Procurement proceeds with the advertisement of the RFP. The legal notice is published in the "New York State Contract Reporter", official newspapers and appropriate trade magazines. Affidavits of publication are provided by newspapers, which are proofed and retained on file by the Senior Buyer. The "Notice to Proposers" is mailed to those firms with a known expertise in the field and to those who have been asked to be placed on the proposers list. The "Notice to Proposers" must appear in the official newspapers in advance of the stipulated due date for proposals. The New York State Contract Reporter stipulates minimum days. Affidavits, certificates, insurance and bond requirements, which will be used to bind the procurement, are provided to all proposers as inclusions in the RFP. Proposals for rolling stock may be required to submit a proposal deposit with the proposal, usually in the amount of 5% of the proposal.

- 4. **Questions on an RFP:** Although questions and other contacts from firms in a position to make a proposal are permissible, *ex parte* conversations with vendors/contractors prior to the proposal being received should be confined to the mechanics of filing a proposal. Any questions that raise issues about the clarity of the RFP should be answered for any and all firm requesting the RFP through means of an addenda (see IFB procedure). Changes in the procurement specifications or requirements will be provided to all prospective proposers in the form of Addenda. Anyone making contact by or on behalf of a vendor/contractor (lobbying or selling) is required to disclose to CDTA. CDTA staff/members are required to make a record of any and all contacts by non-disclosed lobbyists once an RFP has been undertaken.
- 5. **Proposal Opening:** Proposals must be in writing. Proposal openings are not open to the public. Multiple bids/proposals must be obtained from an adequate number of qualified sources (at least two). The proposal evaluation process to be followed will be generally outlined in the RFP document. Proposals that are received or submitted after the scheduled time the proposals are due must be returned to the proposers unopened. Non-responsive and non-responsible proposals shall be rejected. In the event protest the matter referred to the General Counsel for investigation. The

Executive Director shall resolve all protests and his decision shall be final. Proposals must meet the following requirements depending on the subject matter:

- a. **Construction and Maintenance:** Construction procurements based upon an RFP will generally be limited to “design-build” projects. Construction to a prescribed design (“design-bid-build”) requires use of the IFB procedure. Multiple written proposals are required for an RFP. For contracting purposes, extensive state and federal provisions apply and the insurance requirements are more or less stringent depending on the value of the project.
- b. **Goods and Commodities:** An RFP is generally not appropriate for generic items where price competition is available. For specialty items, proposals must be submitted in the form and manner prescribed in the RFP. Multiple written proposals are required or the sole-source procedures must be justified. For contracting extensive state and federal provisions apply.
- c. **Bus Purchase:** Proposals for buses must conform to the requirements set forth in the RFP and such procurements will usually be more appropriate for an IFB. For specialty items, proposals must be submitted in the form and manner prescribed in the RFP. Multiple written proposals are required or the sole-source procedures must be justified. Extensive state and federal provisions apply. Contract forms have been posted. Appendix A and Appendix B must be used.
- d. **Transportation and Operational Services:** Multiple written proposals are required or the sole-source procedures must be justified. For contracting purposes, extensive state and federal provisions will apply. Contract forms have been posted. Appendix A and Appendix B must be used. Because of the nature of this work, there are very stringent insurance requirements.
- e. **Technology:** An RFP is generally not appropriate for generic items where price competition is available. For specialty items, proposals must be submitted in the form and manner prescribed in the RFP. Multiple bids/proposals are required for the product purchased, but this procedure is only appropriate for specialty items where selection will be based upon factors besides price. Multiple written proposals are required or the sole-source procedures must be justified. Extensive state and federal provisions apply. Contract forms have been posted.
- f. **Services and Consultants:** Multiple bids/quotes/proposals are required. Proposals must be in writing. The RFP procedure may only be used for services and consultants where the decision to award will be based upon factors other than price. As provided by the Brooks Act, in procuring architectural and engineering services, the award will be exclusively on the basis of factors other than price. For professional services, including architects and engineers, where award will be based on factors other than price, the mini purchase or these RFP procedures may be used depending upon anticipated contract value. Extensive state and federal provisions apply and the insurance requirements may be more stringent depending on the type of work. Contract forms have been posted. Appendix A and Appendix B must be used.
- e. **Purchases from Preferred Sources:** As provided by State Finance Law section 162, CDTA will procure from certain sources that have been designated by the Office of General Services, provided that the goods and/or services provided by the preferred source meet required levels of form, fit and functionality, and provided that the price quoted by the preferred source does not exceed by more than 15% the prevailing market price as determined by CDTA. In such instances where a preferred source for the necessary goods and/or services is known to exist, that source will be given an opportunity to submit a price quote at least ten days before the procurement is otherwise put out for bid. CDTA reserves the right to bid out procurements for the purpose of ascertaining the prevailing market price, but will contract with the preferred source if and when the price quote of the preferred source comes in within 15% of what is determined to be the prevailing market price.

6. **Post-Proposal Conference:** When the proposed contract is for large-scale purchase of goods or services, a conference may be held after the proposals are received. This is an opportunity for prospective proposers to ask questions about the scope of work or specifications or any other commercial language requirements.
7. **Negotiations:** Contract negotiations are initiated with the proposer(s) identified to be within the competitive range, or with the proposer(s) that have submitted the superior proposal(s). Negotiations are conducted in accordance with guidelines stipulated in the RFP. When negotiations and the price/cost analysis are completed, a contract award recommendation is presented to the Executive Director for consideration. At all times the CDTA retains the right to reject any or all proposals.
8. **Contract Award:** As negotiated, proposals may be rejected or a proposal may be withdrawn. If an agreement beneficial to CDTA is negotiated, and terms accepted by both sides, a contract will be awarded. Award will be made by the Director of Procurement of any contract valued at less than \$100,000 based upon most superior final proposal from a responsible firm. The Director of Procurement will make award recommendations to the CDTA Board of Directors for those contracts that require Board approval. The contract will be drafted based upon the form included in the RFP along with all required state and federal provisions. The scope of the work, prices, rates and terms for payment will be described in detail as negotiated by the parties. After the contract has been formally awarded by the CDTA, signed and returned with all necessary documentation (i.e. insurance certificates, performance bond, etc.) the contractor is notified by the Project Manager to submit the signed agreement original(s) together with any commercial requirements (e.g., bonds, insurance certificates). Notices to proceed are signed by the Project Manager or his designee. Before the contractor can begin work, it must sign the contract and comply with the contract requirements.

G. PROCEDURE 7 - Sole or Single Source (Non-Competitive Negotiations)

1. **Requirements:** This procurement method should be avoided, but may be used where no legitimate competition exists. The sole or single source method of procurement is used when: (a) the goods or services are most readily available from a governmental source that has demonstrated a proven ability to deliver the goods and/or services at a fair and reasonable cost, with no provision for profit, (b) there is only one proposer willing and able to compete; (c) the contract may be firm fixed price or some other type (e.g., cost plus fixed fee); (d) the selection can not be made solely on the basis of price. In such cases, negotiation is usually required with the proposer after receipt of proposal.
2. **Use Request for Proposal (RFP) Procedures:** Noncompetitive proposals (sole source) procurement may be utilized only where there exists no viable competition. (FTA Circular 4420.1E § 9.h). In order to establish the sole source justification, the RFP procedures should be utilized. Suitable consideration should be given to alternate designs, specifications. The reasonableness of the price should be explored, along with alternatives to the purchase. An explanation shall be provided as to why there is no competition and why the purchase from a sole source should be justified. Examples will include situations where the product must be used with a product or design that has already been purchased, or where only a specific design meets the needs of the purchaser.

3. Negotiations: After the proposal is received, the Project Manager/Director of Procurement reviews the proposal. The proposal is checked to ensure that; proper bid deposit/bond, affidavits and certificates are included, references are legitimate, DBE requirements are satisfied, and that applicable contract requirements are met. When the review and analysis is completed, contract negotiations are initiated. Negotiations are conducted in accordance with guidelines stipulated in the RFP. Once negotiations and the price/cost analysis are completed, a contract award recommendation is presented to the Executive Director by the Director of Procurement. If the value of the procurement is \$25,000 or more, the Director of Procurement must obtain Board approval.

4. Contract Award: The following measures will be taken to support any contract award in response to a sole-source procurement:

- a. Notification: The vendor/contractor will be notified in writing of the intent to award, subject to the bidder's ability to meet the requirements of the RFP including contract requirements.
- b. Contract Execution: Before the contractor can begin work, it must comply with the bid requirements by completing, executing and returning the contract that was included with the RFP.
- c. Notice to Proceed: After the contract has been formally awarded by the CDTA, signed and returned with all necessary documentation (i.e. insurance certificates, performance bond, etc.) the contractor is notified by the Project Manager to submit the signed agreement original(s) together with any commercial requirements (e.g., bonds, insurance certificates). Notices to proceed are signed by the Project Manager or his designee.

H. PROCEDURE 8 - Purchase of Environmentally Preferred Products: As provided by New York State Executive Orders 134, 142 & 4, CDTA will procure products that have been proven to be more environmentally friendly. The products will meet one or more criteria of being manufactured from recycled content, containing less/no harmful chemicals, reduced packaging, ability to recycle end product and or packaging. CDTA will consult with the Office of General Services Green Procurement Specifications when procuring products to ensure our continued understanding of green procurement.

As a premium is often paid for more environmentally friendly products CDTA, Executive Order #4 provides some latitude in determining if the more environmentally preferred product is an appropriate cost. CDTA will bid out these procurements according to standard specifications asking for bid alternate pricing for the more environmentally preferred product. If the environmentally preferred product is available for purchase at a reasonable cost CDTA must procure that product. CDTA has determined that if the product is does not exceed more than 15% of the prevailing market price that the price will be deemed reasonable and that product will be purchased.

I. PROCEDURE 9 –Unsolicited Proposals for Public-Private Partnerships and Projects:

- 1. Policy Statement.** CDTA welcomes unsolicited proposals for public-private partnerships and projects. Partnerships are designed to benefit both the public and private partners. CDTA is authorized to enter into agreements to plan, design, finance, develop, construct, reconstruct, replace, improve, maintain, manage, repair, operate projects that promote the "continuance,

further development and improvement of transportation and other services related thereto within the Capital District transportation district.”

2. **Public-Private Partnerships Explained:** In public-private partnerships contemplated by the Policy and Procedures contained herein, the private sector can initiate projects by submitting unsolicited proposals. The private sector also assumes some risk, creating an opportunity for a market-based return on investment. As the degree of responsibility increases, so do the risk but also the opportunity for higher return. The public sector benefits by gaining access, through the private sector, to financing sources and arrangements traditionally not available to CDTA and to innovative methods that can shorten the time required for project design and construction.

Public-private partnerships offer significant advantages to both sectors. The core concepts that are woven through CDTA's belief in and commitment to public-private partnerships in developing infrastructure are desirability and need for: (1) Innovation; (2) Streamlined and expedited selection and contract award processes; (3) Competition; (4) Quality; (5) Leverage of private and governmental expertise; (6) The necessity for fair and consistent standards, consistent messages, and trust in any public private venture; (7) Cost effective use of increasingly scarce public funds; (8) Informed risk taking and resilience to the occurrence of unforeseen and significant problems; (9) Public confidence, accountability, and transparency, and; (10) Continuous monitoring, evaluation, and learning.

3. **Public Private Partnerships Defined:** Public-Private Partnerships shall have one or more of the following characteristics:

1. Leveraging the expertise and resources of the private and public sector to effectively deliver a high quality project, reduce the use of public funds, and enhance confidence and public trust in the performance of government and its ability to spend taxpayer money wisely.
2. Allowing private sector firms the ability to submit innovative, creative, and proprietary approaches, plans, processes, procedures, and mechanisms that have commercial value to the firms and can be tailored to fit CDTA's needs and requirements.
3. Meeting the public need for infrastructure projects that cannot be wholly or as effectively satisfied by existing methods of procurement and financing.
4. Delivering critically needed transportation projects quickly, thereby reducing costs, traffic and/or other disruptions.
5. Providing access to innovative project development and financing sources and arrangements.
6. Providing cost certainty earlier in the procurement process.
7. Encouraging and promoting business and employment opportunities.
8. Attracting a larger number of and increasing competition among highly qualified firms by providing a sound investment opportunity for the private sector.

4. **Procedure for Making Unsolicited Proposals:**

A. Developing a business proposal. Organizations or individuals interested in submitting an unsolicited proposal are encouraged to first contact CDTA to make preliminary inquiries as to the general need for the type of effort contemplated. Preliminary inquiries should be directed to

CDTA's Director of Business Development who may work with the proposer or direct the inquiry to the other appropriate CDTA employee. Prior contact with CDTA technical personnel is permissible and is encouraged with the limited objective of conveying to the prospective offeror an understanding of needs of CDTA and/or its customers relative to the type of effort contemplated. Personal contacts shall be conducted in a manner that (1) precludes CDTA commitment regarding acceptance of an unsolicited proposal; and (2) avoids providing a prospective offeror a competitive advantage in any planned competitive solicitation. The providing of information or consultation with a prospective proposer shall not, in any way, be interpreted as a commitment to expend any public funds or to proceed with any project.

B. Submitting an Unsolicited Proposal. Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow CDTA sufficient time to evaluate the proposal and negotiate a contract if the proposal is ultimately deemed meritorious. Unsolicited Proposals must be submitted in writing. Unless otherwise directed, unsolicited proposals should be submitted to CDTA's Director of Business Development at 110 Watervliet Ave., Albany, NY 12206. The Director of Business Development, or his designee The Director of Procurement and Contracts shall acknowledge unsolicited proposals as soon as possible.

C. Elements of Unsolicited Proposals. Proposals are required, at minimum, to contain a brief statement including the following elements:

- 1. Identification of proposer.** The identity of the person, partnership, corporation, or consortium making the unsolicited proposal. Proposals must be submitted by principals or authorized, disclosed agents. If the proposal is a joint venture, partnership, and consortium or otherwise involves more than one legal entity, the same information will be required for all entities. Any business relationship with Members of the CDTA governing board, or employees must be fully disclosed at the time of the initial proposal. Failure to disclose potential conflicts may serve as a basis for voiding any subsequent agreement.
- 2. The benefit to be provided by the proposed project.** In order to warrant consideration, every unsolicited proposal must describe the benefit that advancing the project or business partnership will bring for CDTA and its customers. At minimum, that benefit must include the generation of revenue for CDTA, and/or goods or services that promote the continuance, further development and improvement of transportation and other services related thereto within the Capital District transportation district, by railroad, omnibus, marine and air.
- 3. Technical description of the goods, services, expenses to be provided under the proposal.** Proposers are required to provide a technical description of the proposed project. This description should include a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed. Proposal should describe the investment proposed to be made by the business partner in the form of a monetary commitment, or expressed in terms of improvements, goods and/or services that they are prepared to commit, and the period of time over which that commitment will occur. Proposal should include the proposed cost and risk allocation structure for the proposed project sufficiently detailed so that

there can be meaningful evaluation; the type of contract preferred; the period of time for which the proposal is valid (a minimum of 4 months is suggested); the proposed duration of project; and brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate.

4. **The costs and/or revenues of the proposed project for CDTA.** Proposals must describe the costs of advancing the project for CDTA and any anticipated revenue for CDTA. In appropriate cases, an explanation should be included as to any foreseeable impact on infrastructure, revenue or “soft” costs, or benefits.
5. **The investment, financing, resources, and/or guarantees proposed to be provided by the respective parties to the public/private partnership.** Proposals must describe any provision for the financing of the private commitments described in the unsolicited proposal. Unless disclosed, all unsolicited proposals shall be regarded as free from contingencies, such as the access to necessary financing. Failure to disclose contingencies on an unsolicited proposal will affect the evaluation of the proposal and may result in action against the business partner if the project does not proceed because of the unavailability of contingent financing that was not disclosed.
6. **The responsibilities that the business partner proposes to assume for advancing the project.** Business partners are required to take responsibility for compliance with customary provisions typically contained in public contracts, as described herein. In addition, unsolicited proposals should spell out the responsibility of the business partner for completing the project. This may include the risk of loss in the event that the project fails to generate the anticipated returns. It may also include performance security to assure that the business partner makes good on commitments. CDTA is self-insured, and the risk of claims is always a concern. CDTA generally does business only with financially responsible firms and individuals assuming responsibility for their own operations. Insurance requirements vary, but, in general, a minimum of \$2 million in liability insurance is required for an ongoing business relationship.
7. **The return, profit or other benefit that the business partner proposes to obtain from the project.** The unsolicited proposal should include a statement as to how the business partner expects to be compensated for the reasonable value of its contribution in terms of goods, services, and investment of capital. One criterion for consideration of the proposal will be a reasonable rate of return to the business partner. CDTA recognizes that the rate of return should correspond to the risk associated with the investment. What is required for the proposal is a reasonable estimate of investment costs, annual revenue, annual expenses, and a description of how the business partner’s return will be secured.

D. Use Of Information. All proposals submitted to CDTA become the property of CDTA and are subject to the applicable Freedom of Information laws. Offerors are advised to familiarize themselves with the provisions of this law. If the offeror has special concerns about proprietary information that it would desire to make available to CDTA, such offeror may wish to suggest for CDTA’s consideration, prior to submission of its proposal, the methods for safeguarding such information from disclosure consistent with applicable public records laws. Nothing

herein precludes CDTA from using any data, concept or idea that it may have intended to use had the unsolicited proposal not been submitted. Subject to this Policy, any information submitted to CDTA shall be held in confidence until such time that CDTA accepts the Unsolicited Proposal and it becomes necessary to commence the contract award process.

5. Evaluation Process for Unsolicited Proposals. CDTA will evaluate proposals and make an independent decision as to whether to embark upon a business partnership or project. The evaluation, negotiation, and approval process will vary depending upon the nature and prospective value/cost of the proposed project.

A. Authority levels for evaluation, contract negotiation and approval. CDTA mandates an evaluation and approval process that considers the probable value of the project, the projected revenue to be generated, the proposed life of the business partnership, and the proposed length of the project. In order to ensure adequate oversight of the process, agreements that create public/private partnerships must be approved by the General Counsel and executed by the Executive Director/General Manager of CDTA. Evaluation, negotiation, and recommendation of unsolicited proposals will be undertaken by CDTA as follows:

- 1. Managers and Directors (up to \$15,000 value of project).** CDTA employs project managers and directors who are responsible for ongoing projects and/or facilities. Managers and directors are authorized to entertain and recommend agreements on the basis of unsolicited proposals for projects that have all of the following criteria: (a) the life of the project, agreement, or business relationship is no more than three years, (b) the annual expenditure or investment in the project by all parties, will never reasonably exceed \$5,000, and (c) the impact of the project on other CDTA operations or facilities is reasonably expected to be negligible. Examples for approval at this level include vending machines and customer amenities.
- 2. Executive Director/General Manager (up to \$100,000 value of project).** The general manager of CDTA is its executive director who works with the management team to make and implement routine business and policy decisions. The executive director is authorized to entertain and undertake agreements on the basis of unsolicited proposals for projects that have all of the following criteria: (a) the life of the project, agreement, or business relationship is no more than five years, and (b) the investment, annual revenue or expenses in the project by all parties, is not reasonably expected to exceed \$100,000. Examples for approval at this level include leases and business partnerships to provide services to CDTA or its customers.
- 3. Board of Directors (\$100,000 or more of value of project).** The board of directors at CDTA makes major policy decisions for the authority and its operating subsidiaries. The board of directors will review, and is required to approve any contract that is negotiated because of an unsolicited proposal where the investment, or project value in any given year, is reasonably expected to be \$100,000 or more; or where the life of the agreement will exceed five years. Examples would include the development of major transportation facilities or long-term leases.

B. Evaluation and Approval Process. The evaluation and approval process employed by CDTA will vary depending upon the nature of the unsolicited proposal, the anticipated value of

the project, the anticipated life of the project, and any substantial impacts on CDTA operations. The purpose of these distinctions is to permit reasonable flexibility and discretion in situations where the proposal is straightforward and meritorious, while there is also limited value and no likely competition. Evaluation of proposals will involve one or more of the following four steps:

- 1. Initial review of the proposal - STEP 1 (all proposals).** An initial evaluation will be conducted by the appropriate CDTA staff to determine that the proposal contains sufficient information and detail to permit a meaningful evaluation. A valid unsolicited proposal must be: (1) innovative and unique; (2) independently originated and developed by the offeror, and, (3) be prepared without CDTA's supervision, endorsement, direction, or direct CDTA involvement. If CDTA determines that a proposal is unacceptable, the proposal shall be returned to the offeror together with the reasons for the return. If the proposal does not meet the requirements of this paragraph, the offeror may be given the opportunity to provide the required information. CDTA may deem an Unsolicited Proposal to be unacceptable for negotiation because of any one of the following threshold reasons:
 - a. The proposal does not contain any unique approaches to financing or capital investment and would be available to CDTA without restriction from other sources, or
 - b. The proposal closely resembles that of a pending competitive solicitation, or
 - c. The proposal is otherwise not sufficiently innovative or unique to justify acceptance, or
 - d. The proposal is otherwise determined to be not meritorious.

- 2. Evaluation of the proposal- STEP 2 (all proposals that make it through step 1).** Proposals that survive the threshold review will be evaluated for merit, with additional consideration of whether there is any viable competition to the unsolicited proposal. The favorable initial evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror. Yet, if the idea or activity is consistent with the goals of CDTA, the concept will be evaluated on its own merit and revenue producing potential. In evaluating an unsolicited proposal for merit, the following criteria will be considered in addition to any other criteria in an effort to decide whether the proposal warrants further consideration:
 - a. Unique, innovative, or meritorious methods, approaches, or ideas that have originated with or are assembled together by the offeror that are contained in the proposed effort or activity.
 - b. Overall merits of the proposed project.
 - c. Potential contribution that the proposed effort is expected to make to CDTA's specific goal, if pursued at this time.
 - d. Capabilities related to experience, facilities, or techniques, or unique combinations thereof that the offeror possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal.
 - e. Qualifications, capabilities, and experience of the proposed principal, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.

- f. The financial benefit to CDTA in implementing the proposal, including but not limited to guaranteed revenue, access to and level of the capital contribution or assumption allocation of risk proposed.
- g. Timing considerations of the proposed effort.

3. Looking for competition- STEP 3 (all proposals). CDTA encourages free and open competition for public/private partnerships and will always consider the practicality of getting competitive proposals before advancing a project that is evaluated as being meritorious. If the decision is to implement an unsolicited proposal for a project, then a competitive process should be used to select the business partner, *unless the proposed concept itself is proprietary*. The manner by which this is done will vary depending upon type, duration, investment value and projected annual value of the project.

- a. **Micro projects.** For projects where both the investment value and the projected annual value of the project are less than \$15,000, CDTA will consider alternatives for competitive proposals and the responsible staff person will document the considerations. Notice will be provided to anyone who has made a similar proposal in the past five years. CDTA may also contact firms or persons who might be in a position to make a competitive proposal for the purpose of exploring whether there is any interest. Publication seeking competitive proposals is permissible, but is not required at this level.
- b. **Small projects.** For projects where both the investment and the projected annual value of the project are less than \$100,000, CDTA will actively seek competitive proposals. Notice will be provided to anyone who has made a similar proposal in the past five years and CDTA may contact firms or persons who might be in a position to make a competitive proposal. In addition, publication is required.

CDTA will publicize in the New York State Contract Reporter, its "**Intent to Negotiate for Contract Offered by Unsolicited Proposal**". The purpose of this publication is to ascertain whether other parties desire and are able to accomplish the same project that is similar to that contemplated within the original Unsolicited Proposal. CDTA's publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information. If interest, in written form, is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then CDTA will allow and consider written submittals as long as it conforms to the same requirements outlined in this policy and required of the original Unsolicited Proposal.

- c. **Large projects.** For projects where either the investment or the projected annual value of the project is \$100,000 or more, CDTA will actively seek competitive proposals. Notice will be provided to anyone who has made a similar proposal in the past five years and CDTA may contact firms or persons who might be in a position to make a competitive proposal. In addition, publication is required.

CDTA will publicize in the New York State Contract Reporter and in at least one other official publication, its "**Intent to Negotiate for Contract Offered by Unsolicited Proposal**". The purpose of this publication is to ascertain whether other parties desire and are able to accomplish the same project that is similar to that contemplated within the original Unsolicited Proposal. CDTA's publication will give notice of the basic business elements of the original offer and inform that other interested parties may inquire about or provide comment, by a date certain (30 days from publication). The publication will not disclose proprietary information. If interest, in written form, is expressed by third parties who also desire an opportunity to submit a proposal for a contract whose elements are similar to those publicized, then CDTA will allow and consider written submittals as long as it conforms to the same requirements outlined in this policy and required of the original Unsolicited Proposal.

4. Assuring a reasonable proposal- STEP 4 (all proposals making it beyond step 1).

CDTA will explore unsolicited proposals to assure that they offer a good value to CDTA and/or its customers. If, based upon efforts to secure other proposals, CDTA determines that it is in CDTA's interest to conduct a competitive solicitation, all proposals received under this policy may be rejected and returned to the submitting parties and CDTA shall inform all offerors of its intentions regarding a subsequent competitive solicitation process. CDTA will otherwise consider and evaluate the proposal or proposals that were unsolicited, or received in response to efforts to secure competition. CDTA staff performing the evaluation shall prepare a memo setting forth the evaluation results. The memo shall also recommend further action if any. Efforts to assure that the proposal terms are reasonable shall vary depending upon the nature of the proposal and whether there are competing proposals. The usual evaluation process shall be as follows:

- a. Available competition.** In cases where there are multiple proposals for substantially similar projects, CDTA shall utilize a weighted evaluation procedure as a means for determining what proposal offers superior value for CDTA and its customers. Factors to be considered in evaluating the proposals must always include the projected cost or revenue of the project to CDTA, but the importance of this factor may vary depending on the project. Other factors that may be considered include the qualifications and experience of the proposers for delivering similar projects.
- b. Sole source or single proposal.** CDTA will pursue by way of negotiation, any project that is deemed to be in the best interests of the Authority and its customers. If the project proposes what looks like good value, CDTA will conduct a secondary review of the initial proposal. CDTA reserves the right to require the submission of supplemental material that will assist CDTA in negotiating a final contract and in determining that the Offeror has the technical capability and financial resources to perform the contract as contemplated. Prior to recommending a contract award to its Board of Directors, CDTA staff will insure that all unsolicited proposals or tentative agreements include reasonable revenue or cost proposals. Depending upon the case, this assessment may be based upon comparable projects, or it may entail a comprehensive review and analysis, including an independent cost estimate on all phases of the project proposal.

C. Committing to an Agreement. Agreements as to projects undertaken in response to this process shall be committed to writing. Agreements where the project value is \$100,000 or more, or where the duration of the project exceeds five years, must be approved by the CDTA Board at an open meeting. The terms and conditions of any contract awarding a public private partnership for infrastructure shall be reviewed at a public meeting of the CDTA Board of Directors. The terms and conditions of any other contract will vary depending upon the nature of the project. Thereafter, CDTA will enforce the agreement and shall ensure that those terms and conditions of the original unsolicited proposal that are committed to the final agreement shall be honored by the business partner.

J. PROCEDURE 10 – PROCUREMENT CARD

CDTA has made a corporate credit card account available to designated employees (currently the Executive Director, Director of Procurement & Senior Buyer) for the purpose of making purchases that are chargeable to the company. Such a credit card may be issued in order to facilitate operating requirements and achieve lower acquisitions costs. The purpose of this policy is to provide a convenient cost-effective alternative for designated employees to make purchases in an expeditious and efficient manner with minimal administrative cost or effort.

Each card has a maximum \$1,000 per transaction as well as other controls set forth to ensure card integrity. A comprehensive Purchasing Card Policy has been developed to offer oversight to the program.

Price Splitting: Purchases shall be equitably distributed among qualified suppliers and purchases shall not be split to avoid the requirements of competition for purchases above the micro purchase threshold.

Purchasing Function - Principle Working Relations

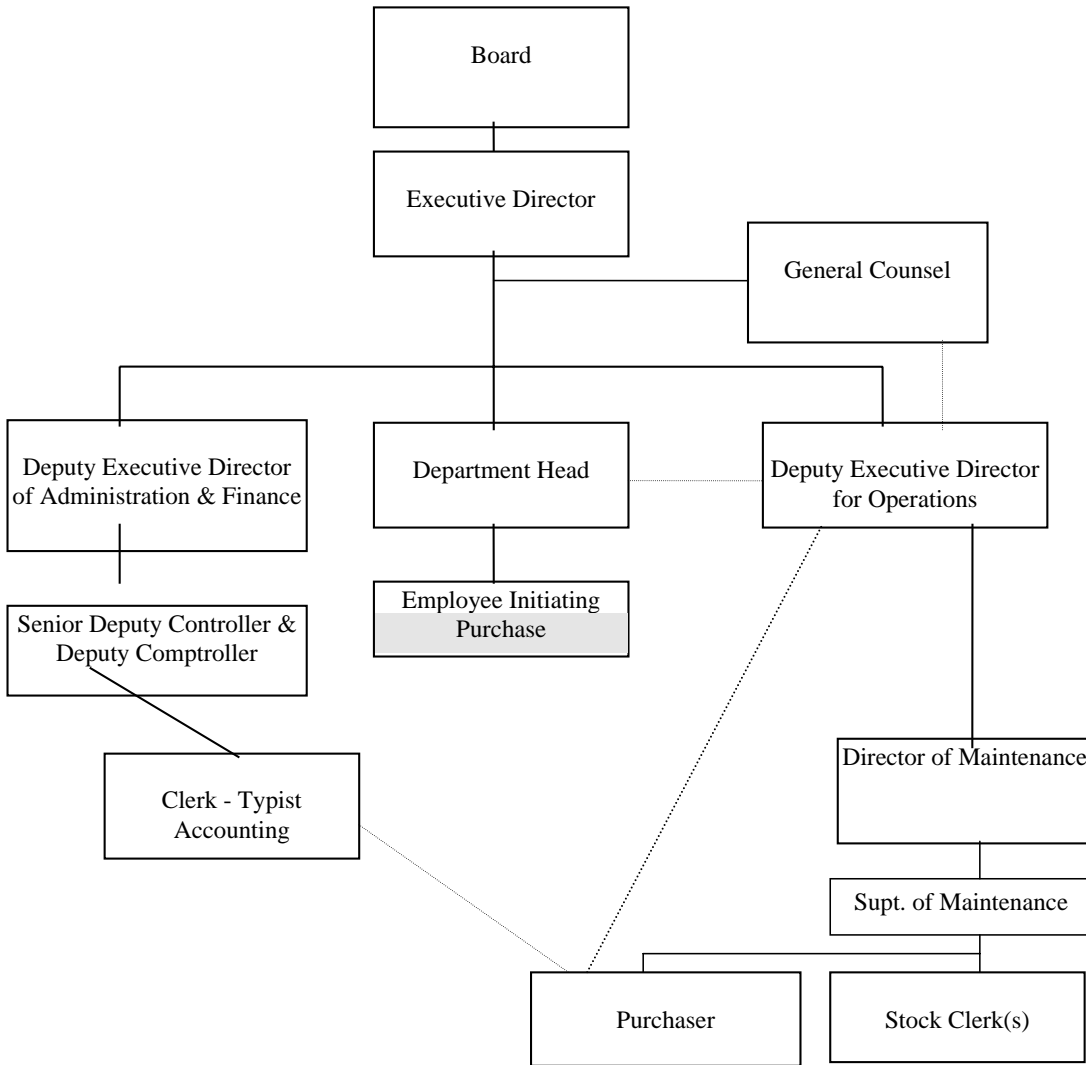


Figure 1

CDTA PURCHASING REQUIREMENTS

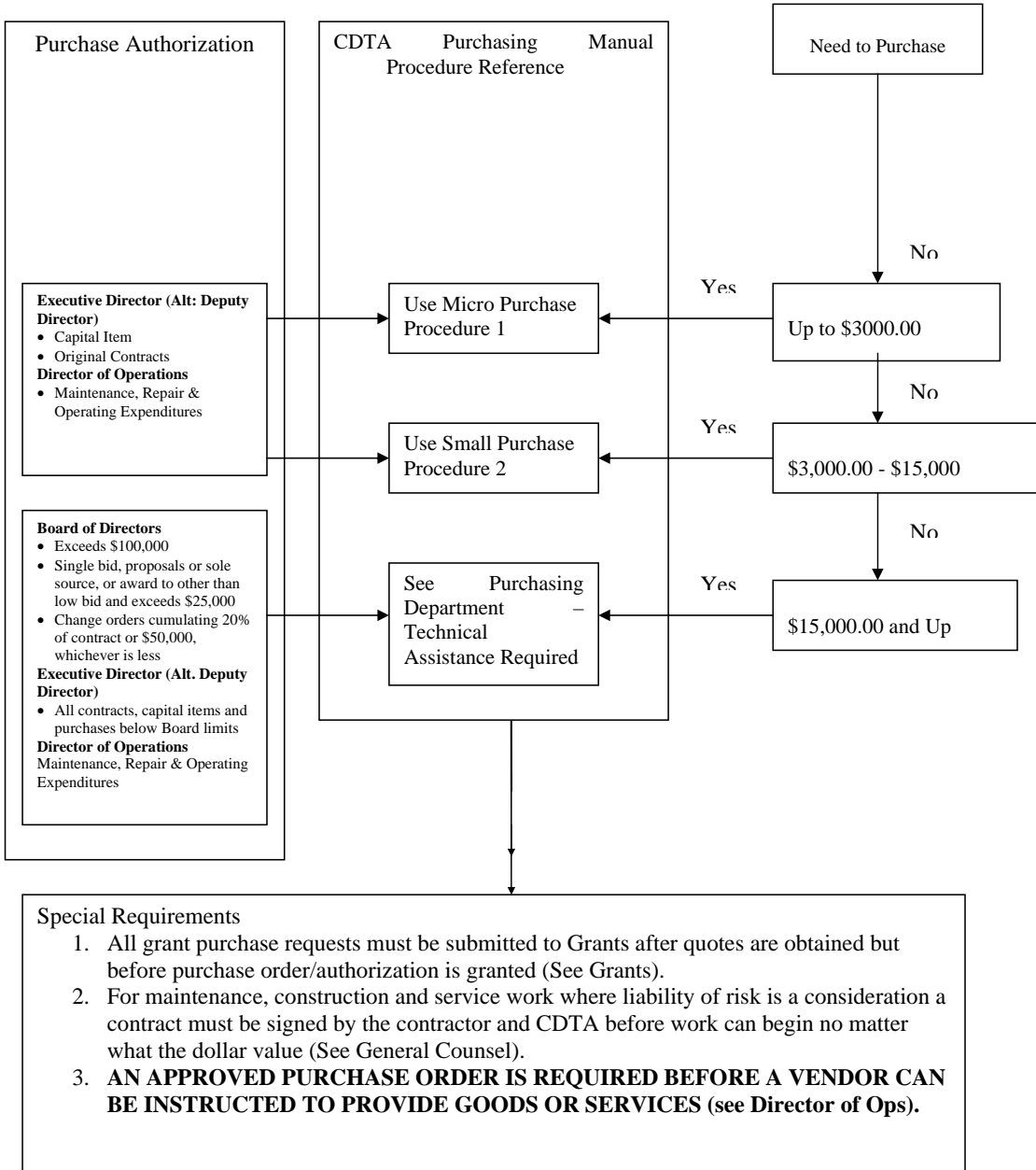


FIGURE 2

Purchase Order Flow

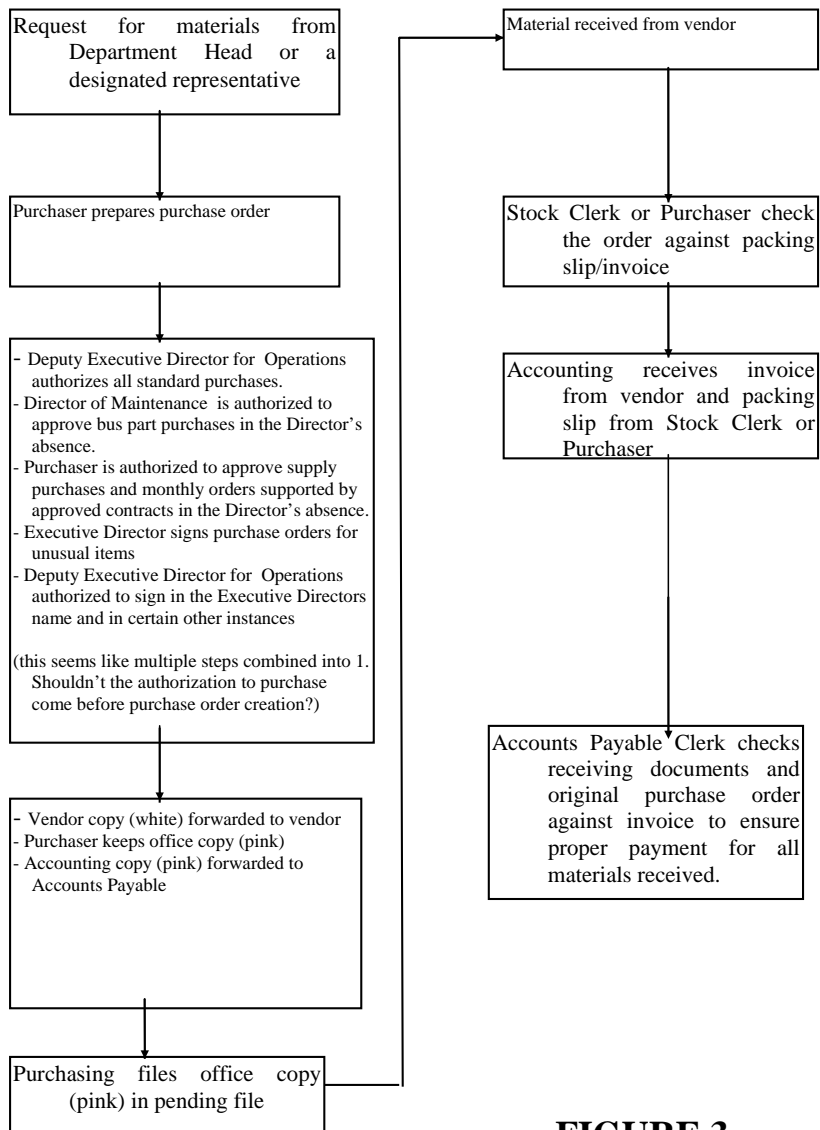


FIGURE 3

Parts Receipt Procedure Step Chart

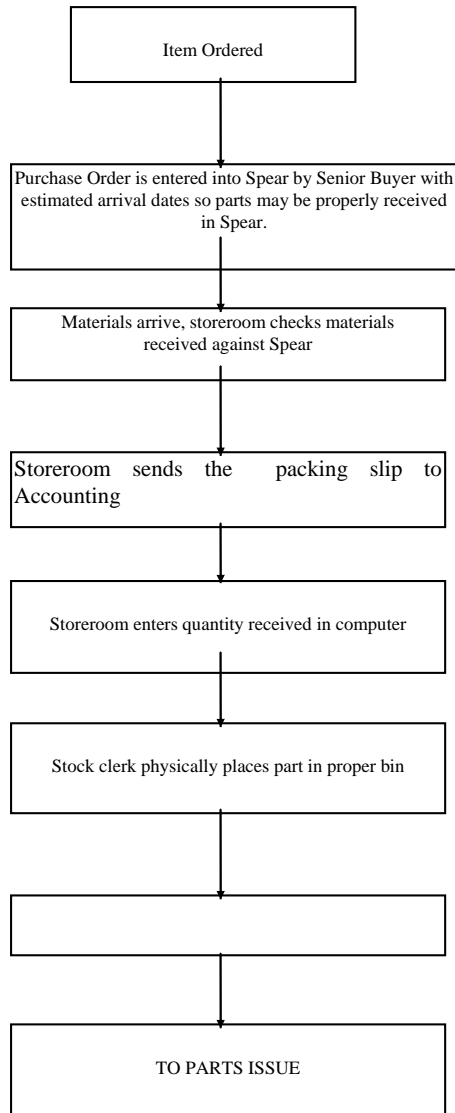


FIGURE 4

Parts Issue Procedure Step Chart

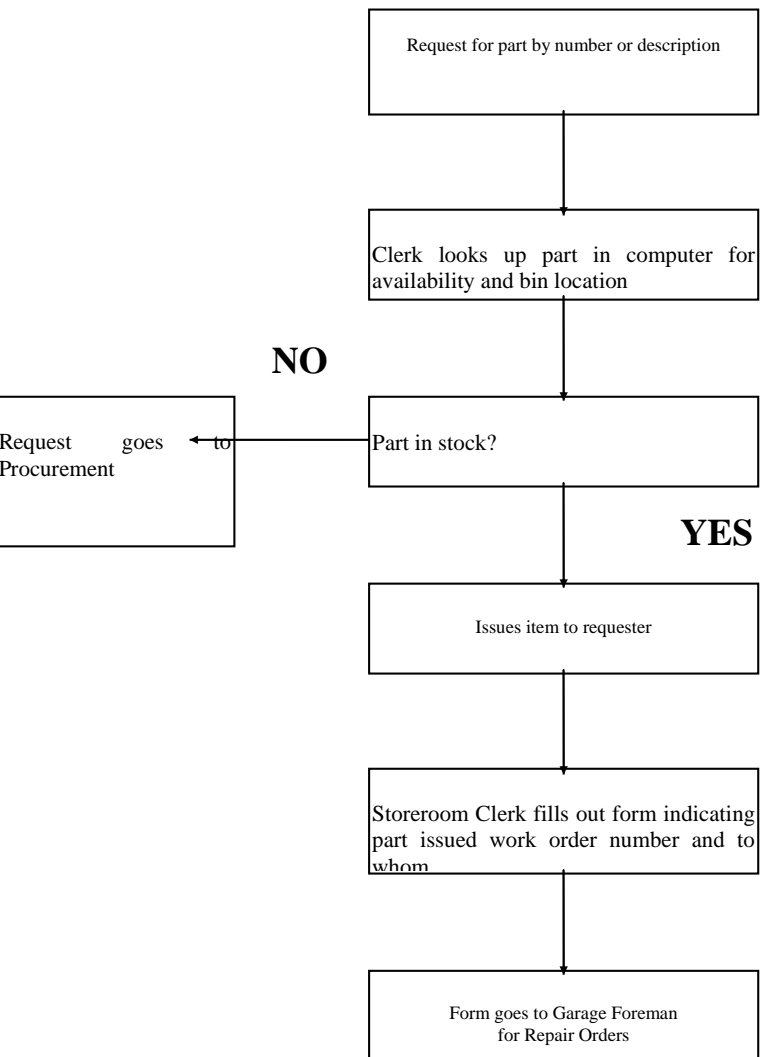


FIGURE 5

Competitive Purchasing Procedure Flow Chart FIGURE 6

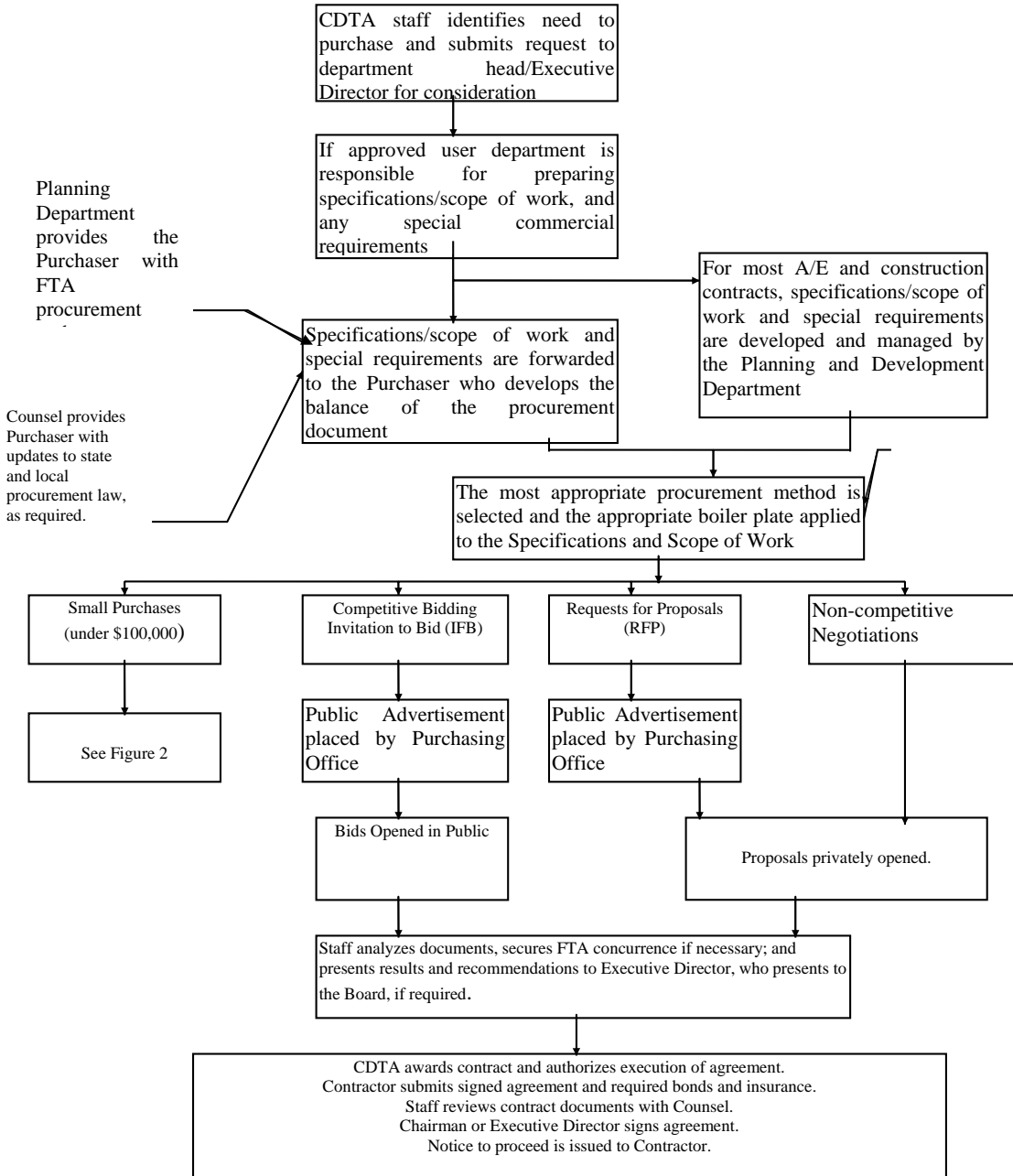


Figure 7: Project Manager’s Procurement File Checklist

Project Mgr. Initials	PROJECT FILE CONTENTS
	1. A copy of the solicitation
	2. A list of those requesting the solicitation
	3. A list of those responding to the solicitation
	4. Copies of the offerings submitted
	5. A memo evaluating the offering and cost suitability
	6. A copy of the contract
	7. Rationale for method of procurement
	8. Selection of contract type
	9. Reasons for contractor selection or rejection
	10. Basis for contract price
	11. Back up for liquidated damage or incentive clauses
	12. On-going contract correspondence
	13. Contract close-out documentation [to include a record of payments made by contractors to DBE subcontractors] as provided for and described in the FTA Best Practice Procurement Manual

A copy of this checklist should remain with the procurement file to document completeness.

The Department Head shall make the determination of responsibility of the bidder for all contracts valued at \$100,000 or greater. For contracts below valued at less than \$100,000, the Project Manager, if that person is not the Department Head, shall make the determination of responsibility of the bidder.

Figure 8: Funding Information Form

FUNDING INFORMATION FORM

TO: ACCOUNTING DEPARTMENT
FROM: _____ TITLE: _____ DEPT./EXT#: _____

SUBJECT: ASSIGNMENT OF FUNDING ELIGIBLE EXPENSES

DATE: ____ / ____ / ____

ITEM/PURPOSE DESCRIPTION:

VENDOR QUOTE/INVOICE #: _____ VENDOR JOB/PROJECT #: _____

INVOICE REFLECTS WORK DONE FROM: _____

DATE OF QUOTE/INVOICE: ____ / ____ / ____ CDTA PROJECT: _____

PAY FROM BLANKET P.O.#: _____ P.O. DATED: ____ / ____ / ____ P.O. AMT.: _____

FEDERAL GRANT # OR STATE CONTRACT #: _____

FEDERAL A.L.I. # _____
(OBJECT CODE)

COST: \$ _____
(ORG CODE)

NYS PIN #: _____

N.Y.S. PARTICIPATION:
PERCENT _____
FIXED AMOUNT _____

FUNDING SOURCE AUTHORIZED BY P&D:

SIGNATURES (Planning Department)

ACCOUNTING DEPARTMENT SECTION

_____ BILLING COMPLETED P.O. DATED: ____ / ____ / ____
_____ REQUEST NUMBER P.O. #: _____
_____ PAYMENT RECEIVED VENDOR: _____
_____ PROJECT CODE _____
_____ Pay from voucher _____

Figure 9: PO Change Request Form

TO: MUNIS ADMINISTRATOR

FROM: _____
Project Manager Department

DATE: ___/___/___

RE: Request to Change PO#: _____ (if you do not have the number, please refer to
GRANT PO LEDGER.XLS on 'PUBLIC ON ARMSTRONG')

Vendor: _____

FUNDING INFORMATION DETAILS WERE PROVIDED ON ORIGINAL REQUEST AND PREVIOUSLY ENCODED IN MUNIS SYSTEM

The request to change the PO is due to:

- Correction of bookkeeping or clerical error
- Scope of work **expanded/ increase** in dollar value (if available, provide copy of approved CO)
- Scope of work **reduced/decrease** in dollar value (if available, provide copy of approved CO)
- Change funding source to another eligible Federal grant/NYS contract
- Miscellaneous **credit** issued by vendor/**decrease** in dollar value

Briefly describe the details of the change you are requesting: _____

Original Funding Source: _____
Original PO Amount: _____
PO will be increased/decreased by: _____
New PO Amount: _____
New Funding Source: _____

The proposed changes to this PO are necessary for project completion.

Date: ___/___/___
Project Manager

This expense is an allowable charge for this funding source/this change of funding source is appropriate for this expense.

Date: ___/___/___
Grants Administrator

I approve the proposed PO changes detailed above.

Date: ___/___/___
Deputy Director

PO Changes have been Implemented as Requested by the Project Manager/Deputy Director and communicated to Accounting Dept. Secretary.

Date ___/___/___
MUNIS Administrator

I have recorded the PO change information on departmental grant ledgers.

Date ___/___/___
Accounting Dept. Secretary

PART II

DISPOSITION OF PROPERTY GUIDELINES **CAPITAL DISTRICT TRANSPORTATION AUTHORITY** **ADOPTED PURSUANT TO SECTION 2896 OF THE PUBLIC AUTHORITIES LAW**

1. DEFINITIONS

A. “Contracting officer” shall mean the officer or employee of the Capital District Transportation Authority (hereinafter, the “Authority”) who shall be appointed by resolution to be responsible for the disposition of property.

B. “Dispose” or “disposal” shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section 2897 of the Public Authorities Law.

C. “Property” shall mean personal property in excess of five thousand dollars (\$5,000) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

2. DUTIES

A. The Authority shall:

(i) maintain adequate inventory controls and accountability systems for all property owned by the Authority and under its control;

(ii) periodically inventory such property to determine which property shall be disposed of;

(iii) produce a written report of such property in accordance with subsection B herewith; and

(iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.

B. The Authority shall

(i) publish, not less frequently than annually, a report listing all real property owned in fee by the Authority. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Authority and the name of the purchaser for all such property sold by the Authority during such period; and

(ii) shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, and the New York State Legislature (via distribution to the majority leader of the senate and the speaker of the assembly).

3. TRANSFER OR DISPOSITION OF PROPERTY

A. Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the disposition and sale of property of the Authority. The Authority shall have the right to dispose of its property for any valid corporate purpose.

B. Custody and Control. The custody and control of Authority property, pending its disposition, and the disposal of such property, shall be performed by the Authority or by the Commissioner of General Services when so authorized under this section.

C. Method of Disposition. Unless otherwise permitted, the Authority shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Authority and/or contracting officer deems proper. The Authority may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, except in compliance with all applicable law, no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

D. Sales by the Commissioner of General Services (the “Commissioner”). When the Authority shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Authority may enter into an agreement with the Commissioner of pursuant to which Commissioner may dispose of property of the Authority under terms and conditions agreed to by the Authority and the Commissioner. In disposing of any such property, the Commissioner shall be bound by the terms hereof and references to the contracting officer shall be deemed to refer to such Commissioner.

E. Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Authority, purporting to transfer title or any other interest in property of the Authority in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

F. Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

(i) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the Authority shall be made after publicly advertising for bids except as provided in subsection (iii) of this Section F.

(ii) Whenever public advertising for bids is required under subsection (i) of this Section F:

A. the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property proposed for disposition;

B. all bids shall be publicly disclosed at the time and place stated in the advertisement; and

C. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Authority, price and other factors considered; provided, that all bids may be rejected at the Authority's discretion.

(iii) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (i) and (ii) of this Section F but subject to obtaining such competition as is feasible under the circumstances, if:

A. the personal property involved is of a nature and quantity which, if disposed of under subsections (i) and (ii) of this Section F, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;

B. the fair market value of the property does not exceed fifteen thousand dollars;

C. bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

D. the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

E. the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the Authority, the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits or other economic development initiatives), the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the Authority; or

F. such action is otherwise authorized by law.

(iv) **A.** An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

1. any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

2. any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (3) through (5) of this subparagraph;

3. any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of one hundred thousand dollars for any of such years;

4. any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars; or

5. any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

B. Each such statement shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the Authority making such disposal.

C. All real property that was purchased with FTA funds that is sold for \$5000 or more and has not reached the end of its useful life shall be approved by Director of Finance who will then notify FTA and make reimbursement arrangements.

Formatted: Indent: First line: 0.5"

The Guidelines are subject to modification and amendment at the discretion of the Authority board and shall be filed annually with the NYS Comptroller on or before the 31st of March.

The designated Contracting Officer for the Authority is [NAME OF CONTRACTING OFFICER].

PART III
CODE OF ETHICAL CONDUCT

**1. CODE OF ETHICAL CONDUCT FOR MEMBERS OF THE
CAPITAL DISTRICT TRANSPORTATION AUTHORITY**

This Code of Ethical Conduct is based upon the Public Officers Law and the Procurement Lobbying Law and shall apply to all members of the Capital District Transportation Authority's board of directors. These CDTA specific principles are intended to enhance the ethical and professional performance of CDTA's members and to preserve public confidence in CDTA's mission.

Code of Ethics:

a. No member should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of the member's CDTA duties.

b. Members must manage all matters within the scope of the CDTA's mission independent of any other affiliations or employment.

c. Members should seek to perform their CDTA duties in a transparent environment, without favor and refrain from engaging in outside matters of financial or personal interest, including other employment that could impair independence of judgment, or prevent the proper exercise of the member's official CDTA duties.

d. No member should accept employment or engage in any business or professional activity which will require the member to disclose confidential information which the member has gained by reason of the member's official CDTA position or authority.

e. No member should disclose confidential information acquired by the member in the course of the member's official CDTA duties nor use such information to further the member's personal interests.

f. No member should use or attempt to use his or her official CDTA position to secure unwarranted privileges or exemptions for himself or herself or others.

g. No member should engage in any transaction as representative or agent of the CDTA with any business entity in which the member has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of the member's official CDTA duties.

h. No member should give by his or her conduct any reasonable basis for the impression that any person can improperly influence the member or unduly enjoy his or her favor in the performance of the member's official CDTA duties, or that the member is affected by the kinship, rank, position or influence of any party or person.

i. Members should avoid making personal investments in enterprises which the member has reason to believe may be directly involved in decisions to be made by the member or which will otherwise create substantial conflict between the member's duty and the public interest and the member's private interest.

j. Each member should endeavor to pursue a course of conduct which will not raise suspicion among the public that member is likely to be engaged in acts that are in violation of the member's trust.

k. Members must use CDTA property, including equipment, telephones, vehicles, computers, or other resources for the sole purpose of conducting their official duties and in a manner consistent with State and local law, and any applicable policies of the CDTA.

l. Members must report all contacts concerning CDTA procurements to the Ethics Officer.

m. Members must file Financial Disclosure Forms with the New York State Ethics Commission pursuant to Public Officers Law section 73-a in a timely manner.

n. Members must not accept travel expense reimbursements from a disqualified source.

o. Members must not accept honoraria from a disqualified source.

DEFINITIONS:

1. **Financial Interest** - A person has a financial interest in any entity if such person owns or controls (i) 10% or more of the stock of such entity or (ii) if such entity's stock regularly trades on an established securities exchange, then 1% or more of such stock.

2. **Contacts** – means any oral or written contact, where it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, any procurement of the CDTA. This includes, without limitation, personal meetings, telephonic communications, letters, faxes and e-mails.

3. **Honoraria** – means a payment, fee or other compensation for services rendered by the member not related to the member's official duties, which payment, fee or other compensation is made as a gratuity, or as an award or honor. For example, for delivering a speech, writing or authoring an article or publication or attending a meeting or conference. In addition, honoraria include travel expenses or reimbursement of travel expense, including lodging, for services rendered by a member that are not related to the member's official duties.

4. **Travel Expenses** – means expenses related to travel, including, but not limited to, airfare, meals and lodging for travel related to the member's official duties.

5. **Disqualified Source** - means an individual or entity, which is (i) regulated by, regularly negotiates with, appears before on other than a ministerial matter, does business with or has contracts with the CDTA; (ii) attempts to lobby or to influence action or positions on legislation or action on regulations or rate making before the CDTA; (iii) is involved in litigation, adverse to the State, with the CDTA and no final order has been issued; (iv) has received or applied for funds from the CDTA at any time during the previous calendar year, up to and including the date of the proposed receipt of honoraria.

AMENDMENTS:

This code may be amended by a majority vote at any regular or special meeting of the Board at which a majority of the members are in attendance, upon 30 days written notice of the proposed change.

2. ETHICS RULES FOR CDTA EMPLOYEES

This Code of Ethics is based upon the Public Officers Law and the Procurement Lobbying Law and shall apply to all employees of the Capital District Transportation Authority and its subsidiaries ("CDTA"). These CDTA specific principles are intended to enhance the ethical and professional performance of CDTA's employees and to preserve public confidence in CDTA's mission.

CODE OF ETHICS:

- a. Employees must not engage in outside activities, including other employment, which could impair independence of judgment, or prevent the proper exercise of one's official duties.
- b. Employees must not accept employment, business or professional activity that makes use of confidential information obtained while working at CDTA.
- c. Employees must not disclose confidential information acquired in the course of their official duties nor use such information to further personal interests.
- d. Employees must not use or attempt to use their official position to secure gifts, unwarranted privileges or exemptions for themselves or others.
- e. Employees must not accept gifts having more than a nominal value from an individual or non-governmental entity that does business with CDTA.
- f. Employees must not do business with any contractor or vendor in which they have a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of their official duties.
- g. Employees must avoid giving the impression that anyone could improperly influence or improperly favor any contractor in the performance of their official duties.
- h. Employees must avoid giving the impression that they are improperly affected by the kinship, rank, position or influence of any party or person.
- i. Employees must not make personal investments with businesses or contractors that could reasonably taint CDTA decisions or processes, or create a conflict of interest with their duties at CDTA.
- j. Employees must pursue a course of conduct that will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their public trust.
- k. Employees must not sell goods or, services to any person, firm, corporation or association which is licensed by or, whose rates are fixed by CDTA.
- l. Employees must use CDTA property, including equipment, telephones, vehicles, computers, or other resources in the course of their official duties and in a manner consistent with State or local law, and any applicable policies of the CDTA.

- m. Employees are prohibited from appearing or practicing or rendering services for compensation on matters before the Authority for two (2) years following employment with the CDTA.
- n. Employees must report all contacts concerning CDTA procurements to the Ethics Officer.
- o. Employees must report potentially unethical behavior by any employee of the CDTA to the Ethics Officer. Employees may file ethics complaints anonymously and are protected from retaliation by the policies adopted by the CDTA.
- p. Certain employees must not engage in certain political activities.

DEFINITIONS:

1. **Financial Interest** - A person has a financial interest in any entity if such person owns or controls (i) 10% or more of the stock of such entity or (ii) if such entity's stock regularly trades on an established securities exchange, then 1% or more of such stock.
2. **Gift** - means the transfer, without equivalent consideration, of any thing or benefit, tangible or intangible, having more than a nominal value, including, but not limited to, loans, forbearance, services, travel, gratuities of any kind, favors, money, meals, refreshments, entertainment, hospitality, promises, tickets to entertainment or sporting events, weekend trips, golf outings, loans of equipment, or other thing or benefit.
3. **Vendor or Contractor** – means any individual or entity seeking to or doing business with the CDTA.
4. **Contacts** – means any oral or written contact, where it could be reasonably inferred that such contact was intended to influence, or could reasonably be expected to influence, any procurement of the CDTA. This includes, but is not limited to, personal meetings, telephonic communications, letters, faxes and e-mails.
5. **Honoraria** – means a payment, fee or other compensation for services rendered by the employee not related to the employee's official duties, which payment, fee or other compensation is made as a gratuity, or as an award or honor. For example, honoraria could consist of an award or money given in return for delivering a speech, writing or authoring an article or publication or attending a meeting or conference. In addition, honoraria include travel expenses or reimbursement of travel expense, including lodging, for services rendered by an employee that are not related to the employee's official duties.
6. **Travel Expense** – means an expense related to travel, including, but not limited to, airfare, meals and lodging related to the employee's official duties.

PROCEDURES:

1. All outside employment or any other activity that may create a conflict of interest must be approved by the Executive Director prior to the acceptance of such activity. All requests for such outside activity approval must be submitted in writing to the Ethics Officer.
2. Employees seeking to engage in political activity should seek detailed guidance from the Ethics Officer.

3. Any acceptance of Gifts or Honoraria must be approved by the Ethics Officer prior to acceptance.

4. Travel Expense reimbursement from a source other than the CDTA must be approved by the Ethics Officer prior to acceptance.

5. Any questions or concerns regarding the Code of Ethics or this Policy should be directed to the Ethics Officer for clarification.

REQUIRED REPORTING:

You are required by the law and regulations to report any and all solicitations, offers or acceptance of gifts, honoraria, outside business activity, conflicts of interest, or procurement contacts. Such reports should be made to the ethics officer.

VIOLATIONS:

In addition to any criminal or civil penalty contained in any law, employees who knowingly and intentionally violate any provision of this policy may be fined, suspended or terminated from employment.

3. PROCUREMENT CODE OF ETHICS

CDTA Procurement Code of Ethics:

The New York State Public Officers Law is applicable and controlling with regard to the ethical conduct of all CDTA employees. Therefore, in addition to Public Officers Law sections 73 and 74, and the Ethics Rules for CDTA Employees, the following rules shall apply to all procurements:

1. No procurement contracts shall be entered into with former members or employees of the CDTA except by resolution adopted by two-thirds vote of the members in attendance at a meeting of the CDTA upon a showing that such contract is in the best interest of the CDTA and then only to the extent permitted by Section 73 of the Public Officers Law.
2. Authority staff engaged in the procurement process shall ensure that proprietary information submitted by bidders and proposers, source selection information, including the number or identity of offerors is not disclosed to any unauthorized person. In the event a request for such confidential information is made, the Office of General Counsel shall determine the appropriateness of disclosure.
3. Authority staff engaged in the procurement process that have a 10% or greater interest, either directly or indirectly, in any entity submitting a proposal must advise the Ethics Officer in writing.
4. Authority staff engaged in the procurement process where the proposer is a relative of such staff, or an entity in which the relative is a director, officer, member, partner or employee of such entity, must advise the Ethics Officer in writing. Relative means any person living in the same household as the staff and any person who is a direct descendant of that staff person's grandparents or the spouse of such descendant.
5. Authority staff engaged in the procurement process are prohibited from soliciting an employment opportunity from a proposer until 30 days after the later of (i) the award of

the procurement or (ii) the staff has no further involvement with the proposer, or such staff informs the Ethics Officer for a determination regarding the use of recusal procedures or reassignment.

6. Authority staff engaged in the procurement process who receives an unsolicited employment-related communication from a proposer is prohibited from pursuing employment until such staff informs the Ethics Officer for a determination regarding the use of recusal procedures or reassignment.

Vendor Code of Ethics:

1. Each procurement solicitation issued by the CDTA will identify the CDTA's single point of contact for that solicitation. Neither the vendor nor any person or entity acting on behalf of the vendor may contact any person other than the single point of contact for the purposes of influencing such procurement.
2. The vendor shall direct every individual or entity retained, employed, designated by or acting for or on behalf of the vendor to attempt to influence the procurement process with the CDTA, to limit their contacts to the designated single point of contact.
3. The vendor will calculate the price(s) contained in any bid or proposal independently, without collusion, consultation, communication, or agreement with any other competing vendor for the purpose of restricting competition.
4. Unless otherwise required by law, the price(s) which the vendor quotes in its bid or proposal will not knowingly be disclosed by the vendor, directly or indirectly, to any other competing vendor prior to the closing date for bids or proposals.
5. The vendor will not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.
6. The vendor will not employ or retain any individual or entity for the purpose of soliciting or securing a CDTA contract upon any agreement or understanding for a commission, percentage, brokerage, or fee that is contingent or dependent upon the outcome of the procurement.