



# **Capital District Transportation Authority**

## **Procurement Manual**

Capital District Transportation Authority & Subsidiaries

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## Section 1: Overview, Purpose, Applicability & Definitions

### Overview

The Capital District Transportation Authority (CDTA) Procurement Manual outlines the policies regarding the use, award, monitoring and reporting of procurement contracts with CDTA and its subsidiaries. The CDTA routinely expends funds to purchase goods and services including.

Purchases involving Federal funds are in compliance with *Federal Transit Administration (FTA) Circular 4220.1G, Third Party Contracting Guidelines*. The procurement procedures described in this document have been developed to assure compliance with these guidelines.

Additionally, this manual is intended to be in full compliance with the applicable provisions of the NYS Public Authorities Law, NYS Finance Law, NYS Economic Development Law, NYS Public Officers Law and NYS Executive Orders.

This manual governs revenue contracts, the consideration of proposals initiated by CDTA, unsolicited proposals received by CDTA, and the disposition of surplus property. This manual does not address the purchase of real property but may be used as a guide for the sale or lease of real property possessed by CDTA.

The basic procurement objective is to secure the best goods and/or services at the lowest available price, consistent with quality requirements and delivery needs. The practice of competitive bidding, whether formal or informal, not only tends to assure reasonable prices, but guards against improper practices.

Failure to appropriately procure goods and services funded by the Federal Government could seriously impact CDTA's receipt of Federal funding. All CDTA staff involved with procurement activities must familiarize themselves with CDTA procurement guidelines, FTA regulations and other pertinent documentation as promulgated.

### Purpose

This Procurement Manual set forth the requirements that CDTA and its subsidiary corporations (individually or collectively referred to as "CDTA") must adhere to in the solicitation, award, and administration of its third-party contracts for goods and services.

These guidelines are meant to:

- Formalize practices which ensure that CDTA interests are protected;
- Assure that all federal and state procurement laws and regulations are followed; and
- Communicate policies: give guidance to purchasing personnel and to others with delegated purchasing authority.

This Procurement Manual has been duly adopted by resolution of the CDTA Board of Directors and detail CDTA policy and instructions regarding the use, awarding, monitoring, and reporting of procurement contracts. This Manual shall be reviewed and approved by the CDTA Board of Directors on an annual basis.

### Applicability

The CDTA Procurement Manual applies to all commodity, service and professional service contracts procured by CDTA. These guidelines adhere closely to the Federal Procurement Requirements outlined in FTA Circular 4220.1G as a way of ensuring compliance with FTA requirements in all CDTA procurement activities.

Where applicable federal, state law, ordinances, codes, rules, or regulations contain requirements that are in conflict with, or that impose greater obligations upon CDTA than these Guidelines, those requirements shall take precedence over those contained herein.

CDTA shall not be precluded from adopting additional requirements for particular contracts relating to the matters covered by this Procurement Manual.

#### *Definitions*

When used in this Manual:

**Advertisement:** The publication of a Notice of Procurement Opportunity in the New York State Contract Reporter, newspapers in general circulation of the counties served by CDTA, trade papers and minority-focused publications and on the CDTA website.

**Altoona Testing:** The Bus Testing Program applies to recipients of FTA capital assistance who purchase new model transit buses or existing bus models being produced with a major change. The Bus Testing Program is generally not applicable to purchasers of school buses or over-the-road motorcoaches, unless those buses are being acquired with FTA funding for use in public transportation service. The testing process is a “pass/fail” standard that will better inform transit systems in the evaluation of buses to be purchased. Further information may be found in the “Final Rule for Bus Testing” (49 CFR Part 665)

**Best Value:** A selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, and quality of proposed personnel and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer deemed most advantageous and of the greatest value to CDTA.

**Brand Name:** A name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names/numbers that are associated with only one manufacturer.

**Commodities:** Standard articles of commerce in the form of material goods, supplies, products or similar items. Commodities do not include technology.

**Construction:** The supervision, inspection and building of, and all expenses incidental to the acquisition, construction, repair, painting or reconstruction of, facilities and equipment for use by CDTA.

**Contractor:** Any person, partnership, private

corporation or association: Selling materials, equipment or supplies, or leasing property or equipment, to CDTA. Constructing, reconstructing, rehabilitating or repairing buildings or other improvements for or on behalf of CDTA; rendering or providing services to CDTA pursuant to a Contract.

**Contracts or Procurement Contracts:** As defined by the Federal Acquisition Regulation: a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. Contracts would include bilateral instruments, awards and notices of awards; job orders or task assignment letters issued under basic ordering agreements; letter contracts, orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications.

The parties to a Contract must possess the legal capacity to enter into the contract, and they must assent to the terms of the contract. Verbal agreements are not recognized as Contracts.

**Contract Administrator:** This individual will be the primary contact with the contractor and shall establish frequent and direct communications with the contractor. This is the only individual who, with proper consents and documentation, can authorize changes to the contract. In most cases, this individual will be the staff member who led the procurement process for the project. If a Cost Reimbursement or Progress Payment form of contract is used, the Contract Administrator shall monitor contractor progress to ensure that the maximum allowable contract amount is not exceeded and that funds are not paid to the contractor in an amount greater than either the percentage of work completed or actual costs incurred.

**Cost Reimbursement (CR) Type Contract:** A general compensation arrangement which requires CDTA to pay the Consultant a fixed fee plus all allowable actual costs (as established by predetermined cost principles and rates) provided such costs and fee do not exceed the final negotiated contract price, as incurred by the Consultant in performing the "agreed to" Scope of Work. This type of contract is appropriate for qualifications-based procurements and negotiated procurements based on a Scope of Services rather



than detailed specifications.

**Design-Bid-Build:** The project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.

**Design-Build:** A system of contracting under which one entity performs both architectural/engineering and construction under one contract.

**Design Specifications:** Specifications based on the design of a product or service. Typical design specifications may include dimensions, materials used, commonly and competitively available components, and non-proprietary methods of manufacturing.

**Disadvantaged Business Enterprise:** A small business concern as defined by 49 CFR Part 26 and has been certified as such by the Unified Certification Program (UCP).

**Emergency Procurement:** The procurement of goods or services under circumstances where a delay in procurement may result in danger to employees or the public, damage to CDTA facilities or equipment, or an impediment, delay or danger to the business operations of CDTA.

**Federal Transit Administration:** FTA is one of ten modal administrations within the U.S. Department of Transportation. The Federal government, through the FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees grants to state and local public transit providers. These grantees are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that grantees follow Federal mandates along with statutory and administrative requirements.

**Firm Fixed Price Type Contract (FFP):** A general compensation arrangement which places the risk of performance for a lump sum on the contractor, regardless of the actual costs incurred by the contractor. The only allowable adjustments to the lump sum contract price are those arising from authorized changes in scope of services or changes in specifications. This type of

contract is appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications or design specifications where there are no substantial uncertainties relating to cost, performance, or schedule. This type of contract may only be used in sealed bidding procurements.

**Formal Bidding:** Bidding involving public advertising, sealed bids or RFP, and is required for procurements of goods or services in an amount of \$25,000 or more, except as otherwise provided herein.

**General Services:** Those services provided by an individual or business which are not considered professional or construction.

**Director of Procurement:** Individual who has responsibility for the overall conduct of the procurement. This individual is responsible for ensuring compliance with applicable CDTA Guidelines and governmental regulations in the procurements under his/her purview.

**Dispose or Disposal:** Means 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.

**Independent Cost Estimate (ICE):** Such estimates may be obtained from published competitive prices, results of previous competitive procurements, including some type of price escalation percentage, or price quotes from manufacturers. All procurements with an expected cost of \$250,000 or more require an ICE prior to letting of the procurement.

**Informal Bidding:** Bidding without public advertising but within formal procedures, which may include, without limitation, written, telephonic or electronic bidding.

**Invitation for Bids (IFB):** CDTA request for sealed bids setting forth the detailed specifications for the work to be performed.

**Maintenance Bond:** An instrument of security furnished by the contractor and his/her surety for the maintenance of the work after completion, in accordance with the contract documents.

**Master Agreement:** May be employed for a term of no more than 20 years and are used to maintain a qualified roster of trade Contractors to perform small jobs that are critical to the smooth function of facilities. Master Agreements make no guarantee of work but allow for qualified vendors to be available for work that will improve efficiency in the day to day operations.

**Micro-Purchase:** Purchases under \$10,000. Purchases below this threshold may be made without obtaining competitive quotations if CDTA determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers (in the local area) and no splitting of procurements to avoid competition.

**Minority/Women Business Enterprise (MWBE):** Any business enterprise which is at least fifty-one percent (51 %) owned by, or in the case of a publicly owned business, at least fifty-one percent (51 %) of the capital stock of which is owned by citizens or permanent resident aliens who are minority persons, and/or women and such ownership interest is real, substantial and continuing. The minority/woman ownership must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field. For the purposes of these guidelines "minority person" shall refer to persons as are defined in Section 2879(3) of the Public Authorities Law. Minority Business Enterprises are certified as such through New York State Department of Economic Development.

**New York State Contract Reporter:** A publication of procurement opportunities printed for the New York State Economic Development Bureau pursuant to the New York State Economic Development Law.

**Offer:** A promise to provide goods or services according to specified terms and conditions in exchange for material compensation,

**OGS Bid Contracts:** Purchase prices established for various items which have been competitively bid by the NYS Office of General Services (the "OGS") and

which may be used by CDTA and its subsidiaries to make procurements for goods/services provided FTA requirements are included in the contract. NYS contract numbers shall be referenced on purchase orders.

**Organizational Conflict of Interest:** Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to CDTA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.

**Performance Bond:** An instrument of security furnished by the contractor and his surety for the performance of the work in accordance with the contract documents.

**Performance Specifications:** Specifications based on the function and performance of a product or service under specified conditions, preferably conditions that can be reproduced for testing purposes. Performance specifications may include useful life, reliability in terms of average intervals between failure, and capacity.

**Piggybacking:** An assignment of existing contract rights to purchase supplies, equipment, or services.

**Practicable:** Means capable of being used without violating the performance, availability at a reasonable price, availability within a reasonable period of time and maintenance of a satisfactory level of competition.

**Preferred Source:** Is a vendor or contractor that has been accorded with preferential 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 certified as such.

**Procurement:** The acquisition by CDTA of products, services, or public works by purchase process and policy as outlined in this manual, excepting:

- The purchase of periodicals, reference materials, treatises, or professional research tools;
- The payment of fees or tuition associated with

- continuing education courses, training courses, conferences, seminars, and symposiums,
- Expenditures governed by the CDTA "Travel Policy",
- The purchase of advertising space or advertising time in any medium.
- Expenditures associated with internal or public meetings

**Professional Services:** Services of a professional nature, including without limitation, accounting, legal, medical, occupational, architectural, engineering, consulting, advertising, marketing and planning.

**Professional Services Contract:** Any written agreement to provide a service, including but not limited to legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, marketing, advertising, architectural, engineering, surveying or other personal services of a consulting, professional or technical nature, for a fee, commission or other compensation, by a person or persons who are not providing such services as officers or employees of a state agency or public corporation.

**Prompt Payment:** Payment of a debt due and owing by CDTA before interest accrues thereon pursuant to a statement adopted in accordance with these Guidelines.

**Responsible:** A potential contractor is considered Responsible if it can demonstrate that it has the ability to perform successfully under the terms of the proposed contract, taking into account the offeror's technical and financial capability. Responsibility refers to the ability of the contractor to deliver the requested items/services.

**Responsive:** A bid which complies, in all material respects, with the terms of the solicitation and is completed, executed, and submitted in accordance with the instructions set forth in the solicitation. Responsiveness refers to the integrity of the submitted bids and the bid process.

**Senior Buyer:** The individual(s) at CDTA responsible for purchasing general operating goods and services including bus parts. This individual is also responsible for the preparation of all purchase orders.

**Service-Disabled Veteran's Business Act:** This Act establishes a 6% contract participation aspirational goal for firms certified by New York State as at least 51% owned by a Service-Disabled Veteran.

**Services:** A professional, consulting, technical, or other service, including but not limited to, legal, testing, accounting, bookkeeping, secretarial, management consulting, audit, investment banking, planning, training, statistical research, insurance, advertising, public relations, architectural, engineering, appraisal, janitorial, surveying, housekeeping, and waste disposal, performed for a fee, commission or other compensation.

**Single Bid:** Two or more competitive bids are solicited and only one bid is received. A single bid is a subcategory of "Sole Source".

**Small Procurement Informal Bidding:** A small procurement method of procuring goods or services under \$25,000, based upon competitive selection; quotes are requested and received via fax or regular/electronic mail.

**Sole Source:** The goods or services to be procured are available from only one responsible source; or no other goods or services will satisfy CDTA requirements; or prior state, federal or Board approval has been granted.

**Surety Bond:** Refers to an agreement between a transit industry contractor or supplier and a surety bond writer that guarantees a contract obligation with a transit property. Typically, transit agencies require bonds that cover 100% of the value of a contract. If a contractor defaults on a contract or faces financial difficulties, the Surety Bond underwriter will owe the transit agency the full amount of the contract.

**Tag On:** Refers to the addition of work (supplies, equipment or services that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In Scope" changes are not tag-ons. The use of tag-ons is prohibited.

**Term Agreements:** CDTA will enter into Term Agreements with professional firms that have been

determined to be qualified. Under such circumstances an RFP will be issued to select qualified firms. When services are needed from a firm with a Term Agreement the Project Manager will develop a detailed scope of work and submit it to at least two of the firms. Work shall be awarded to the firm submitting the most favorable proposal.

Competition) If there is conflicting information between Uniform Guidance and FTA C.4220. Uniform Guidance takes precedence.

**Time and Material (T&M) Type Contract:** A general compensation arrangement which provides for a fixed rate including Overhead and Profit, and material paid for at cost, plus handling charges. This type of contract is permitted only:

1. After a determination that no other compensation arrangement is suitable;
2. The contract or purchase order contains a price ceiling that the contractor exceeds at its own risk, and
3. All labor and equipment rates (including overhead and profit), are predetermined and set forth in the contract and materials are to be paid for at cost.

**Transit Vehicle Manufacturer (TVM):** As defined by U.S. DOT DBE regulations, a TVM is any manufacturer whose primary business purpose is to vehicles specifically for public mass transit. Only TVM's who have submitted a DBE goal methodology to FTA that has been approved or not disapproved, at the time of the solicitation are eligible to bid (49 CFR 26.49(a)(1)). FTA Grantees are required to submit, within thirty (30) days of award the name of the success TVM and the total dollar value of the contract.

**Uniform Guidance:** Uniform Guidance (a/k/a Super Circular) means U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. part 200. The Uniform Guidance applies to all Federal grants and cooperative agreements. The Uniform Guidance (Super Circular) prohibits solicitations that contain features that unduly restrict competition. FTA recipients are prohibited from using FTA assistance to support an exclusionary or discriminatory specification. (See FTA's enabling legislation at 40 U.S.C. §5325(h), FTA Circular 4220.1G, Chapter VI, paragraph 2.a (4)-Prohibitions, and C.F.R. §200.319,

## Section II: General Procurement Guidelines

### 1. *Contract Administration System:*

CDTA maintains a contract administration system to ensure that Contractors perform in accordance with the terms, conditions, and specifications of their contracts, including purchase order contracts. (**Appendix 6** outlines contract administration)

### 2. *Approvals & Responsibilities:*

#### Board of Directors

- Authorize all contracts in excess of \$200,000 or those that are Single Bid or Sole Source award that exceed \$50,000.
- Authorize all contracts for any contract to be awarded to other than the low bidder in excess of \$25,000.
- Authorize all contracts that are a result of a Request for Proposal or Invitation for Bids where the reasonably anticipated value of the contract is expected to exceed \$200,000.
- Approval of cumulative (sum total) set of change orders that exceeds 20% of the original contract value or \$150,000- whichever is greater.
- For contracts valued below \$200,000, the board will approve any cumulative (sum total) set of change orders that pushes a contract's value over \$200,000.
- Annual review and approval of procurement guidelines and supporting procedures.
- Annually review all Sole Source awards under \$50,000.

#### Chief Executive Officer

- Implementation of and overall compliance with procurement policy and procedures.
- Within approved budget and appropriated funding limits, doing all things necessary and required to acquire materials, services and equipment needed by CDTA.
- Authorizing all contracts and change orders not requiring Board approval.
- Executing all contracts.

#### Director of Procurement

- Responsible for the development and implementation of procurement policies and procedures and overseeing the annual Board approval of the procurement guidelines. The Director of Procurement shall also coordinate the activities of the General Counsel, Grants Manager, Senior Buyer, Comptroller and Manager of Inventory as related to procurement activities.
- Coordination of all procurement activities including for goods and services and maintenance of bidders lists and procurement files.
- Ensuring that all purchases comply with all applicable state, federal and local laws and regulations.
- Serving as the Disadvantaged Business Enterprise Officer (DBE) and Minority/Woman-Owned Business (MWBE) Officer, and reporting directly to the CEO on all matters related to D/MWBE (including verification of DMWBE subcontractor reporting requirements).
- Placing all required advertisements, conducting bid openings and performing cost and product comparisons to ensure purchases are made in a timely fashion to ensure efficient work processes.

#### General Counsel

- Formulating contract documents in compliance with applicable state and federal requirements and advising staff on changes in law and requirements that impact procurement practices.
- Reviewing procurement and contract documents for form.
- Advising the Chief Executive Officer on legal matters, including protest procedures.

- Maintaining an original of contracts and contract change orders on file.
- Serving as Procurement Integrity Officer and Ethics Officer to assure compliance with the prohibition against improper contacts during the procurement process (State Finance Law section 139-j).
- Representing CDTA in protests and procurements or contract-related disputes.

#### Chief Financial Officer or Designee

- Examining, reviewing, and settling vendor claims with CDTA and preparing reports required by law, including Public Authorities Law Sections 2879, 2801, 2802, 2900 and Economic Development Law.
- Maintaining the accounts payable function including matching purchase orders to invoices and any receiving documents.
- Reporting and disclosing required financial information.
- Request and oversee audits of the procurement function, as required.

#### Inventory Manager and Stock Clerks

- Receiving and issuing parts and materials and making necessary entries to assure computerized inventory control.
- Stockroom security.
- Recommending purchases for adequate inventory supply through timely notification of the Director of Procurement.

#### Project Manager/End User

- Making timely requests to procure goods and services and provide sufficient information to support the request, including formulation of specifications, independent cost estimates and other supporting documents and information.
- Approving invoices/progress payments and certifying that work was actually performed and goods actually received in compliance with the terms of the contract documents. For single item purchase, this is done by the Project Manager signing the purchase order, and in the case of progress payments this is done by approval of contractor invoices. Invoices shall be checked to ensure that listed rates and charges correspond with those set forth in the contractor's proposal and are otherwise prudent and reasonable.
- Notifying the Director of Procurement and the Ethics Officer of any real or suspected impermissible contact about a pending procurement.

#### New York State Comptroller

Contracts meeting criteria specified under the Public Authorities Reform Act of 2009 will be forwarded to the New York State Comptroller's office for approval after all CDTA approvals have been completed.

#### Contractor Purchases on Behalf of CDTA

CDTA's Procurement Manual applies to purchases by contractors that are made on behalf of CDTA. 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 CDTA's best interest to have a contractor purchase items on behalf of CDTA. The following guidance is offered:

- Any purchase made on behalf of CDTA should, to the extent practicable, be included in the contractor's proposal or budget.
- All materials purchased must be necessary for the performance of the contract.
- All materials with a life beyond the expiration of the contract must be inventoried and returned to CDTA upon close of the contract in good condition, reasonable wear and tear excepted.
- CDTA procurement guidelines should be used, and State contract purchases are acceptable.
- All purchases in excess of \$5,000 must be explicitly approved by CDTA.

## Contractor Purchases on Behalf of CDTA

CDTA values good working relationships with Contractors and Vendors. Contractors and Vendors who desire to do business with CDTA agree to the terms and conditions set forth in published procurement documents. Contractors and Vendors may express their interest in doing business with CDTA by registering as a vendor on the CDTA website. 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 prohibition on collusions and procurement lobbying 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.

### *3. Ensuring Most Efficient and Economical Purchase:*

All purchase requests shall be reviewed by the Department Head, Director of Procurement, Senior Buyer or Grants Manager to avoid purchase of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase.

### *4. Intergovernmental Procurement Agreements:*

To foster greater economy and efficiency, CDTA may enter into State and local intergovernmental agreements as allowable by law for the procurement or use of common goods and services. The requirements and standards of this document apply equally to procurements entered into under such agreements.

### *5. Use of New York State Office of General Services (NYS OGS) and General Services Administration (GSA) Contract Prices and Excess or Surplus Federal Property:*

If allowed, CDTA may utilize either NYS OGS or the Federal GSA schedules for the procurement of particular goods and services. NYS OGS and GSA contract prices are deemed competitive prices.

If allowed, contracts may be awarded based on the state or federal prices without additional competitive procedures. If the contract price available through the state or federal price lists is lower than the lowest bid price after sealed bidding, formal bidding or informal bidding, the bids shall be rejected and a contract awarded based on the state or federal contract price. If these sources are used, proper documentation shall be attached to the purchase order to ensure that an adequate and detailed procurement record exists.

If it is determined that the OGS bid contract price is not the lowest available, or if purchase under an OGS bid contract would result in an inordinate delay in delivery, then the regular bidding process provided in these Guidelines shall be used, and a contract awarded to the lowest responsive and responsible bidder.

If allowed, CDTA may use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is considered preferable and reduces project costs.

### *6. Awards to Responsible Contractors:*

CDTA shall award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. In making a responsible contractor determination, consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. Responsibility differs from responsiveness in that responsibility generally applies to the offeror. Responsiveness applies to the bid submission and its conformance with the specifications or requirements of the solicitation document.

CDTA will also utilize the “*List of Parties Excluded from Federal Procurement or Nonprocurement Programs*” (Debarred List) to ensure that the prospective contractor is not listed. A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

#### *7. Written Record of Procurement History:*

A properly documented procurement file should be a complete record of procurement actions and fully support the successful contractor’s bid price. It provides a complete background as a basis for informed decisions at each step in the acquisition process. A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries. If the procurement action is the result of a contract amendment or exercise of an option, sufficient data should be included to fully support the basis for the price and procurement action.

CDTA shall maintain records detailing the history of all procurements. A *Procurement Checklist* (Appendix 1) outlines the required elements of the procurement file.

#### *8. Use of Time and Materials Type Contracts:*

As required in FTA Circular 4220.1G, CDTA shall use Time and Material Type Contracts only:

- a) After a determination that no other type of contract is suitable; and
- b) If the contractor specifies a ceiling price that the contractor shall not exceed except at their own risk.

#### *9. Settlement of Contract Issues/Disputes:*

In accordance with good administrative practice and sound business judgment, CDTA will be responsible for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve CDTA of any contractual responsibility under its contracts. Violations of the law will be referred to the State or Federal authority having proper jurisdiction.

#### *10. Contract Period of Performance:*

CDTA shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options.

All other types of contracts (supply, service, leases of real property, revenue, and construction, etc.) shall be based on sound business judgment. CDTA will be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out-of-scope change will require a sole source justification.

#### *11. Independent Cost Estimates:*

CDTA shall perform an independent cost estimate for every procurement expected to cost \$150,000 or more before receiving bids or proposals. An independent cost estimate is an estimate of the proper price level or the value of the supplies or services being purchased. This estimate can be used in determining the reasonableness of the actual price



offered.

In some cases, obtaining cost estimates may be difficult or may lie outside the competence of agency personnel. In the case of construction projects, a design or engineering firm may already be under contract and may perform this service.

Equipment estimates can often be prepared from published price lists or from past competitive procurements updated with inflation factors. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.

Professional services often range widely in both price and quality. It may be worth obtaining a professional cost estimate by a firm not interested in the final procurement. In the case of facility design services, industry standards to estimate design as a percent of construction are available. Other transit authorities are also a valuable source of cost estimating information if they have undertaken similar projects.

#### *12. Contract Cost and Price Analysis:*

A cost and price analysis is a determination that the cost or price offered by a contractor is reasonable, given current market conditions. The purpose of cost and price analysis is to ensure that CDTA does not pay unreasonably high prices. A cost and price analysis must be performed in connection with every procurement valued at \$250,000 or greater. The method and degree of analysis is dependent on facts surrounding the procurement situation.

Prices that are unreasonably low can also be detrimental to good procurement if they prove to be an indication that the offeror has made a mistake or misunderstood the work to be performed. All procurement files shall contain documentation that the offered price is fair and reasonable.

#### *13. Federal Cost Principles:*

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with Federal Cost Principles. CDTA shall use Federal Cost Principles to determine allowable costs for all federally-funded cost-reimbursement type contracts.

#### *14. Cost Plus Percentage of Cost:*

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used by CDTA.

#### *15. Procurement with State and Federal Funds:*

In all cases where procurements are made by CDTA with state and/or Federal funds and are conditioned upon, or subject to, laws or regulations for purchasing, CDTA shall observe such laws and/or regulations. This shall apply to all matters, including bidding, advertising for bids, reviewing bids, awarding contracts, monitoring awarded contracts and reporting awarded contracts. CDTA incorporates New York State Required Clauses (attached as Appendix 7) and Federal Required Clauses (attached as Appendix 8) into procurement documents and contracts. These clauses are updated no less than one time per year to ensure current compliance.

Federal regulations permit grant applicants, such as CDTA, to incur project costs before receiving formal approval or grant awards. It is the practice of CDTA not to incur costs or entertain the award of contracts for capital projects to be funded in whole or in part with Federal aid unless Federal aid supporting the projects is dedicated in an adopted Federal budget as a formula appropriation to CDTA or as an earmarked appropriation to CDTA.

## *16. Full and Open Competition:*

All procurement transactions above the micro-purchase level, as defined in Section I of this manual, will be conducted in a manner that provides maximum open and free competition. All procurement transactions above the micro-purchase level, as defined in Section I of this manual, will be conducted in a manner that provides maximum open and free competition. The following are considered to be restrictive of competition and may not be used in any solicitation:

**Excessive Qualifications:** Imposing unreasonable business requirements for bidders or offerors.

**Unnecessary Experience:** Imposing unnecessary experience requirements for bidders and offerors.

**Improper Prequalification:** Using prequalification procedures that conflict with the prequalification standards described in Section II.16.

**Brand Name Only:** Specifying only a “brand name” product without listing its salient characteristics and not allowing “an equal” product to be offered. Brand names are among the most restrictive types of specification.

**Restraint of Trade:** Non-competitive practices between firms or affiliated companies;

**Retainer Contract:** Noncompetitive awards to any person or firm on retainer contract if that award is not for the property or services specified for delivery under the retainer contract.

**Organizational Conflicts of Interest:** An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice; a contractor’s objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.

**Arbitrary Action:** Taking any arbitrary in the procurement process, such as awarding to other than the most favorable contractor is prohibited by CDTA.

**Excessive Bonding:** Imposing unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.

**Improper Sole Source:** Negotiation without proper justification.

## *17. Geographic Preferences:*

CDTA shall not use statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This requirement does not preempt State licensing laws.

Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

## *18. Prequalification Criteria:*

CDTA does not currently pre-qualify products or persons prior to solicitation. However, in the event that pre-qualification becomes necessary in the future, CDTA will ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring goods and services are current and include no less than three (3) sources to ensure

maximum full and open competition. As such, pre-qualification lists must contain a date as to when the list was last updated and a signature of the person who updated it. CDTA will not use pre-qualification lists that are over one (1) year in age and do not contain at least three persons, firms, or products. Also, CDTA will not preclude potential bidders from qualifying during the solicitation period. This period is defined as the period from issuance of the solicitation to its closing date.

#### *19. Written Procurement Selection Procedures:*

CDTA shall use written selection procedures for procurement transactions as follows:

Solicitations shall include a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

#### *20. Request for Deviation from Specifications:*

Specifications for goods and/or services shall be written clearly and concisely to minimize ambiguity and to ensure that CDTA receives the goods and/or services that are ideally suited for its needs. Where appropriate, provisions should be made in the specifications to allow bidders to seek deviations from the specifications. The purchaser and user should consider all such requests and approve those requests that enhance flexibility in bidding without sacrificing the quality or integrity of the goods and/or services being procured.

All requests for deviations that are submitted, accompanied by CDTA responses, shall be shared with all potential bidders. Such documentation shall be provided to all bidders prior to bid opening.

All requested deviations from these specifications will be responded to, in writing, in one of the following manners:

- (a) Approved as an equal
- (b) Rejected

CDTA will respond in writing to all requests no later than five (5) calendar days prior to bid opening. All requests and CDTA responses thereto, will be furnished to all prospective bidders and become addenda to these specifications.

#### *21. Written Addenda:*

CDTA reserves the right to issue clarifying information regarding the content of a procurement document should CDTA in its sole judgment, determine it is necessary to do so.

#### *22. Written Protest Procedures:*

CDTA shall include *Written Protest Procedures* in its solicitations to handle and resolve disputes relating to their procurements. CDTA shall disclose information regarding all protests to FTA. All protest decisions must be in writing. It is understood that reviews of protests by FTA will be limited to CDTA's failure to review a complaint or protest (Per 4220.1G), failure to comply with the Written Protest Procedures set forth in these Procurement Guidelines or violations of the Federal law or regulation.

An appeal to FTA must be received by the cognizant FTA Regional Office or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

### *23. Options:*

An option is a unilateral right in a contract by which, for a specified time, CDTA may elect to purchase additional equipment, supplies, or services called for by the original contract, or may elect to extend the term of the original contract. If CDTA elects to use options, the following requirements apply:

**Evaluation of Options** – The option quantities or periods contained in the contractor’s bid or offer must be evaluated to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a Sole Source procurement. (To be eligible for Federal funding, options must be evaluated as part of the price evaluation of offers or must be treated as Sole Source awards).

**Exercise of Options** – The exercise of an option must be in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised. The option price must be determined to be fair and reasonable, and a written justification of this determination must be included in the procurement file.

### *24. Disadvantaged/Minority/Women-Owned Business Enterprise:*

It is the desire of CDTA to promote and assist participation by D/M/WBEs, and to facilitate a fair share of the awarding of contracts thereto.

The CDTA DBE Liaison Officer shall maintain a list of DBE entities certified to perform public work, supply items for purchase contracts, or perform personal or professional services of a kind and nature that may be needed by the Authority.

CDTA will, on a routine basis, notify all vendors, contractors, consultants, or other firms with which it does business, that it will affirmatively ensure that DBEs will be afforded full opportunity to submit bids, quotes, or proposals in response to CDTA solicitations. CDTA will comply with all applicable equal opportunity laws and regulations.

### *25. Payments:*

**Advance Payments:** CDTA shall not participate in advance payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA or other appropriate funding provider. CDTA contracts shall not contain advance payment provisions unless prior written concurrence is obtained from FTA.

**Progress Payments:** Progress payments may be used, provided the following requirements are followed:

- a. Progress payments are made only to the contractor for costs incurred (as opposed to percent of completion) in the performance of the contract, and;
- b. When progress payments are used, CDTA must obtain adequate security (materials, work in progress, and finished goods) for which progress payments are made. Adequate security for progress payments may include taking title, irrevocable letter of credit or equivalent means to protect CDTA’s interests in the Progress Payments;
- c. Percent of completion payments are used by CDTA in its large construction contracts.

**Partial Payments:** Can be made based upon specified deliverables as agreed to by CDTA and the contractor.

**Final Payment:** Final payment is made to the contractor when it has satisfied all the deliverable requirements called for by all provisions of the contract, including submission of all required documentation. Final payment signifies that the performance obligations of both parties to the contract have been satisfied. Before making a final payment, the Contract Administrator or Procurement personnel shall obtain a signed release from the contractor releasing CDTA from any further claims by the contractor. The Contract Administrator/Procurement personnel shall also obtain a signed receiving and inspection report from the lead department head certifying that all deliverable items have been received, inspected, and accepted as being in conformance with the contract specifications.

#### *26. Emergency Procurements:*

From time to time, emergency situations may arise which require that a procurement be made without following normal purchasing procedures. Emergency situations should be restricted to those times when delay in completing the procurement could result in jeopardy to persons or property. In addition, the situation leading to the emergency should be one that could not be normally anticipated. If an emergency situation occurs, it must be documented, and this documentation must be attached to the purchase order and placed in the procurement file. The procurement must be approved by the Director of Procurement, Chief Operating Officer and/or Chief Executive Officer.

Emergency procurements shall, to the extent that time permits, follow regular procurement guidelines concerning the solicitation of quotes and the approval of the procurements. A written memorandum justifying the emergency nature of the procurement shall be maintained in the procurement file. In all cases of emergency purchases, solicitations should be requested from as many potential sources as is practicable under the circumstance and a cost and price analysis must be prepared. If soliciting from only one source, a Sole Source justification in writing must accompany the procurement documentation.

#### *27. Bonding Requirements:*

To insure the adequate and expeditious provision of goods, equipment and/or services procured by CDTA, bid or performance bonds may be required where appropriate, or as stipulated by state or Federal law. Final payment, however, will be withheld from the vendor until the department head requesting the procurement certifies as to the successful and total completion of the goods, equipment and/or services procured.

All construction (Public Work) contracts in **excess of \$100,000** shall require a 5% bid guarantee. A performance bond, certified check or other guaranteed negotiable instrument, or letter of credit for 100 % of the contract price in a form acceptable to CDTA guaranteeing the contractor's faithful performance of all terms under such contract: payment bonds (in the amount of 50% on contracts under \$1 million, 40% on contracts between \$1-\$5 million, or \$2.5 million on contracts over \$5 million).

Performance security is not mandated for product contracts.

In instances where a performance bond is offered, the bond shall be in the amount of the contract and issued by a duly incorporated entity authorized to guarantee the faithful performance of contracts and to do business in the State of New York as a surety.

**Letter of Credit:** A letter of credit used as bid or performance security must:

- a) Be an irrevocable letter of credit issued by a bank or financial institution of B-rating or better,
- b) Be signed by an authorized representative of the issuing institution,
- c) Name CDTA as beneficiary and be in a form otherwise acceptable to CDTA. The letter of credit must state that an amount representing at least ten percent (10%) of the bid price is available to be drawn on, unconditionally, by CDTA under the expressed terms and conditions. These terms and conditions, including the location at which CDTA can draw

the funds, an effective date and an expiration date, should be clearly stated in the letter of credit.

#### *28. Insurance:*

Each contractor/vendor shall maintain the appropriate kinds and limits of insurance as imposed by law or the contract with respect to all work and operations performed under the contract by the contractor/vendor and each of their subcontractors.

Each policy shall list out CDTA and all subsidiaries (Capital District Transportation Authority; Capital District Transit System, Capital District Transportation District, Inc., Capital District Transit System, Number One, Capital District Transportation District Inc.; Capital District Transit System, Number Two, Capital District Transportation District, Inc., Access Transit Services, Inc., CDTA Facilities, Inc., and their members, officers, agents, servants, and employees; and other substituted or additional agents CDTA may hire) as the additional insured.

#### *29. Prompt Payment Policy:*

See *Appendix 2* that outlines CDTA Prompt Payment Policy.

#### *30. Build America Buy America (BABA) Requirements:*

*The FTA has implemented 49 CFR Part 661-Buy America Requirements and 49 CFR part 663-Pre-Award and Post Delivery Audits of Rolling Stock Purchases to support U.S. jobs and the U.S. manufacturing industry.*

CDTA is a grantee of the FTA. As a recipient of FTA funds, CDTA is required to comply with the Buy America requirements specified in 49 CFR Part 661 & part 663, which state that, except in certain enumerated situations, no funds may be obligated by the FTA for a grantee project unless all iron, steel and/or manufactured items used in the project are produced in the United States. The Buy America requirements apply to construction contracts and acquisition of goods/equipment or rolling stock, including Capital Leases. FTA has established a general waiver for inclusion of this provision in small purchase procurements (defined by Federal Regulations as less than \$150,000), so actual applicability for this clause is for contracts greater than \$150,000.

In April 2022 a memorandum was issued to guide federal agencies and their recipients on the implementation of Build America Buy America (BABA) for the purchase of construction materials (e.g. lumber, drywall, glass, etc) to be manufactured in the United States. Domestic preference for construction materials per 2 CFR Part 184.

*Contractors shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.*

*General Waivers are listed in 49 CFR 661.7, and include final assembly in the US for 15 passenger vans, and 15 passenger wagons produced by Chrysler Corp, software, microcomputer equipment and small purchases made with capital, operating or planning funds.*

The Buy America requirements state that:

CDTA shall adhere to the Buy America clause set forth in its grant contract with the FTA.

1. CDTA shall include in its bid specification for procurement an appropriate notice of the Buy America provisions. Such specifications would require, as a condition of responsiveness, that the bidder submit with its bid a completed Buy

America certificate.

2. Whether or not a bidder certifies that it will comply with the applicable requirement, such bidder is bound by its original certification and is not permitted to change its certification after bid opening. A bidder that certifies that it will comply with the applicable Buy America requirements is not eligible for a waiver of those requirements.

The following statement is contained in CDTA's grant contracts with FTA:

"Sections 165(a) and (b) of the Surface Transportation Assistance Act of 1982, as amended, require that Federal funds shall not be appropriated or utilized for any contract awarded unless all iron, steel and manufactured products used in FTA-funded projects are produced in the United States; however, these general requirements may be waived by the Administrator of the FTA or his/her designee if the Administrator finds:

1. That the application of such general requirements would be inconsistent with the public interest;
2. That the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
3. That the inclusion of a domestic item or domestic material will increase the cost of the contract between the grantee and its supplier of that item or material by more than twenty-five percent (25 %). The Administrator will grant this "price differential" waiver if the amount of the lowest responsive and responsible bid offering the item or material that is not produced in the United States multiplied by 1.25 is less than the amount of the lowest responsive and responsible bid offering the item or material produced in the United States; or

With regard to the procurement of buses and other rolling stock (including train control, communication and traction power equipment) under the FAST Act, that (1) the cost of components produced in the United States is more than sixty percent (65%-FY18/19 and then 70%-FY20 and beyond) of the cost of all components, and (2) **final** assembly takes place in the United States.

A Certificate of Compliance with Section 165(a), whereby the bidder certifies compliance with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations contained in 49 C.F.R. Part 661, shall be completed for all federally assisted procurements of steel, iron, or manufactured products. A Certificate of Compliance with Section 165(b)(3), whereby the bidder certifies compliance with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the applicable regulations contained in 49 C.F.R. Part 661, shall be completed for all federally-assisted procurements of buses, other rolling stock and associated equipment."

### *31. Liquidated Damages:*

When liquidated damages are included as a potential remedy in any solicitation there must be a reasonable expectation that damages will be suffered through a delay in the contract completion. The method of assessment for damages will be established within the solicitation, along with the calculation and rationale to be used in establishing damages to provide a daily rate. For federally funded contracts, any damages recovered must be credited to the project involved unless FTA permits otherwise.

### *32. Construction Projects – Design-Bid-Build Method:*

Definition – Procurement method for construction projects requiring separate contracts for design services and for construction services.



Design Services – For design services, CDTA must use qualifications-based procurement procedures in compliance with applicable Federal and State law and regulation.

Construction – Depending on the estimated dollar value of the construction contract, CDTA must use either the sealed bid method of procurement or small purchase procedures to procure construction services.

### *33. Construction Projects- Design-Build Method:*

Definition – Procurement method consisting of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.

Procurement Method Determined by Value – Because both design and construction are included in a single procurement, CDTA must use the procurement method appropriate for the services having the greatest cost for the entire procurement, even though other necessary services would not typically be procured by that method. If construction costs are predominant then CDTA must use the sealed bid method of procurement to select the contractor. If design costs are predominant then CDTA must use qualifications-based procurement procedures to select the contractor.

Selection Processes – CDTA may structure the design-build procurement using a single step or two-step method.

### *34. Revenue Contracts:*

A revenue contract is a contract in which CDTA, or sub recipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract.

Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, CDTA should conduct its revenue contracting as follows:

- a) Limited Contract Opportunities: If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then CDTA should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- b) Open Contracting Opportunities: If one party seeks access to a public transportation asset, and CDTA is willing and able to provide contracts or licenses to other parties similarly situated, then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

### *35. Piggybacking:*

Within the conditions set forth below, FTA permits CDTA to use existing contract rights held by another recipient commonly called "piggybacking":

**a) Exercise of Options:** CDTA may use contract options held by another recipient with the following limitations:

- 1) **Consistency with the Underlying Contract.** FTA expects CDTA to ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
- 2) **Price.** CDTA may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
- 3) **Awards Treated as Sole Source Procurements.** The following actions constitute Sole Source awards:



- a. **Failure to Evaluate Options before Awarding the Underlying Contract.** If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a Sole Source award.
- b. **Negotiating a Lower Option Price.** Exercising an option after the recipient has negotiated a lower or higher price will also result in a Sole Source award unless that price can be reasonably determined from the terms of the original contract, or that price results from federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example. In the circumstances described in this paragraph, FTA assistance may be used to support a Sole Source award only if that award can be justified under FTA's third party contract standards for Sole Source awards.

**b) Acquisition through Assigned Contract Rights:** Although FTA does not encourage the practice, CDTA may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract; however, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. See FTA's *"Best Practices Procurement Manual"* for further information about procurements through assignment of another's contract rights. The recipient using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. For further details, please refer to FTA's Pre-Award and Post-Delivery Handbooks for buses and rail cars, which contain copies of those certifications. The recipient seeking to use assigned contract rights will not usually be able to determine whether the assigning recipient originally procured unreasonably large quantities; however, before proceeding with the assignment FTA does expect the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract.

### *36. Violation or Breach of Contract Terms:*

Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.

### *37. Termination:*

Termination for cause and termination for convenience provisions must be included in contracts exceeding \$10,000.

### *38. Change Order Procedure:*

Change order means an order authorized by CDTA directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor ("change orders" must be within the scope of the original competition). A change order must be signed and approved by the project manager.

A change order must have an Independent Cost Estimate (ICE) that supports the price provided and must be included with the requisition requesting the change. The Procurement Department must receive a requisition for a change order with the proper authorizations and an ICE must be attached. A change order must have a cost or price analysis performed to determine that the change price is fair and reasonable. The Board will approve any cumulative (sum total) set of change orders that exceeds 20% of the original contract value or \$150,000, whichever is greater. For contracts valued below \$200,000, the board will approve any cumulative (sum total) set of change orders that pushes a contract's value over

\$200,000.

The contract must be evaluated to determine if the change in contract amount has raised the total contract threshold so that additional clauses or certifications are required (i.e., Buy America, Lobbying, etc.)

**Cardinal Change Order** – A contract change which is outside the scope of the original contract, and thus not within the authority of the changes clause. Such changes are “Sole Source Procurements” and must be processed accordingly.

In all cases, Federal Transit Administration circular 4220.1G (or the most current version) Third Party Contracting Guidelines must be followed. The Best Practices Procurement Manual ([http://www.fta.dot.gov/grants/13054\\_6037.html](http://www.fta.dot.gov/grants/13054_6037.html)) can be referenced for additional information.

#### *39. Procurement Contracts with Former Officers or Employees of CDTA:*

Contracting with former officers or employees of CDTA is restricted by the provisions of Public Officers’ Law section 73, and 74, and the portion of these guidelines concerning conflicts of interest where applicable.

#### *40. Annual Financial and Compliance Report:*

The Chief Financial Officer will ensure that Financial and Compliance Reports are prepared on an annual basis no later than October 1. These reports will 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, contracts with Foreign Business Enterprises, all contracts that were exempt from the publication requirements of Article 4-C for the Economic Development Law, the basis for such exemptions and the status of the existing procurement contracts. Reports on procurement contracts may be a part of other annual reports that CDTA is required to make. Copies of these reports will be provided upon reasonable request.

#### *41. Restrictions on Conflicts with Lobbying:*

Consistent with CDTA ethics rules and as set forth in the Public Officers’ Law, CDTA staff engaged in the procurement process shall ensure that the procurement process operates free of conflicts of interest, undue influence, and with qualified contractors in compliance with federal and state law.

**Restrictive Period**-The restrictive period commences when CDTA issues the first written document soliciting a response from offerors through the contract award and approval.

**Designated Contact**-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 Chief Executive Officer may from time to time designate another person as the designated contact for procurements as he/she may deem necessary.

**Impermissible Contact**-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 a contact made to anyone, where such contact is not reasonably interpreted as an attempt to influence the procurement or, a contact that is intended to influence that is made to the *Designated Contact Person for Procurements*, or a contact that is intended to influence the procurement made to anyone outside of the Restrictive Period.

#### *42. Organizational Conflicts of Interest*

Organizational Conflicts of Interest are considered to be restrictive of competition.

CDTA maintains the right to enforce disciplinary action for conflict-of-interest violations by the CDTA's officers, employees, or agents, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

#### *43. Negotiation of Contract for Profit*

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

#### *44. Procurement of Recovered Materials*

A recipient or subrecipient that is a State agency or agency of a political subdivision of a State and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, [42 U.S.C. 6962](#). The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

#### *45. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (200.323)*

When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(b) Such consideration means:

- (1) These business types are included on solicitation lists;
- (2) These business types are solicited whenever they are deemed eligible as potential sources;
- (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

#### *46. Authorization of Rolling Stock Acquisitions and Related Equipment (FAST Act §3019)*

Section 3019 of the FAST Act (Fixing America's Surface Transportation Act) provides new avenues for FTA grantees to acquire rolling stock (like buses, railcars, etc.) and related equipment. The aim is to make these purchases more efficient and affordable, especially for smaller transit agencies.

This can be done using the following methods:

- Cooperative Procurement: Grantees can use cooperative procurement contracts established by a State government or an eligible nonprofit entity.
- State Cooperative Procurement Schedules: States can enter into contracts with vendors for other entities, including transit agencies, to purchase from.
- Non-Profit Cooperative Procurements (Pilot Program): A pilot program allows transit agencies to access contracts administered by qualifying nonprofit organizations.
- Joint Procurement Clearinghouse: A clearinghouse was mandated to help grantees aggregate purchases and find partners for potential cost savings.
- Capital Leasing: Section 3019 addresses capital leasing for rolling stock and equipment, encouraging the leasing of components like batteries for zero-emission vehicles.

#### *Section III: Detailed Procurement Guidelines*

When a purchase is initiated by CDTA, it will fall into one of the following four main procurement categories:

- 1. Micro-Purchases:** purchases resulting in cost to CDTA under \$10,000.
- 2. Mini Purchases:** purchases resulting in cost to CDTA between \$10,000 and \$24,999 per year, and a subcategory of mini purchases for bus parts.
- 3. Large Purchases:** purchases resulting in an aggregate cost to CDTA of \$25,000 or more per year. For example: Sealed Bids/Invitation for Bids/Competitive Negotiation/Request for Proposals Procurement of Architectural and Engineering Services Non-competitive Negotiation/Sole Source
- 4. Preferred Source:** Purchases from sources mandated by the State of New York.

The following steps must be performed to acquire goods and services on behalf of CDTA:

- ✓ All documents used in any procurement must be filed in the electronic procurement file.
- ✓ The folder should be labeled with the name of the actual item or service procured and the contract term. The CDTA Procurement Checklist shall be completed.
- ✓ The responsibility for assuring that the file contains the required documents rests with the Director of Procurement. CDTA reserves the right to determine the time frame concerning the solicitation and awarding of bids.

## 1. *Informal Procurement Procedures:*

Informal procurement procedures are appropriate and applicable to those relatively simple and informal procurements of goods and/or services costing, in the aggregate, less than \$25,000. *NOTE: The Davis-Bacon Act applies to federally funded construction contracts over \$2,000* (<https://www.dol.gov/whd/govcontracts/dbra.htm>). The following is a summary of CDTA micro and small procurement procedures:

### a. Procurement by Micro-Purchase: <\$10,000:

Procurements of goods and/or services costing less than \$10,000 do not require competitive quotations. When employing this type of procurement, the Procurement Department must ensure equitable distribution among qualified suppliers in the local area. Determination that the price is fair and reasonable, and how this determination was derived, must accompany the requisition or be present in the procurement file. For micro-purchases, a fair and reasonable price determination is made based on price analysis. Purchases of this amount are exempt from Buy America requirements.

### b. Procurement by Small Purchase: >\$10,000 and <\$25,000:

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, bus parts or other goods/services that cost more than \$10,000 but do not cost more than \$24,999. For small purchases, a fair and reasonable price determination is made based on price analysis. Determination that the price is fair and reasonable, and how this determination was derived, must accompany the requisition or be present in the procurement file.

### c. Bus Parts

Bus parts that are procured using the mini purchase method are obtained from the lowest responsible bidder to provide a written quote. The Senior Buyer is provided with a listing of required parts and quantities from the Inventory Manager twice per week. That list is formulated into a request for quotation that contains all vendors who have expressed interest in receiving parts bids. Currently there are 55 vendors on the “Weekly Parts List”. These vendors may bid on any or all parts that are requested.

To maintain safe reliable service, the Senior Buyer will order parts from the bidder with the lowest price and ability to meet delivery needs.

The Procurement Department shall make every effort to provide an opportunity for qualified vendors, including certified DBE’s, to offer quotes for procurements. Solicitations may be limited to one source only if the Procurement Department determines that only one source is reasonably available.

In cases when there are high volume parts and cost savings can be utilized by purchasing the bus parts under an exclusive contract, an Invitation for Bid (IFB) procurement is utilized. That procurement method is described in detail as a “Large Purchase”.

## 2. *Large Purchases:*

Pursuant to New York’s Public Authorities Law and Article 4-C of the New York Economic Development Law, all procurements of \$25,000 or more require the selection of contractors on a formal, competitive basis, unless otherwise indicated in this Manual, and must be advertised in the *New York State Contract Reporter*. Advertisements may also be placed in local newspapers or trade publications as deemed appropriate by the Procurement Department.

Procurements in this category fall into one of two types: Invitation for Bids (IFB) or Request for Proposals (RFP). Contracts for all formal procurements must contain *Termination for Cause* and *Termination for Convenience* provisions, as well as *Breach of Contract* provisions and remedies for breach of contract.

#### a. Sealed Bid/Invitation for Bids (IFB) Method of Procurement

This method of procurement is the preferred method for acquisitions with the annual cost totaling twenty-five thousand dollars (\$25,000) or more and when one or more of the following factors is present:

- A complete, realistic, and exact specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business;
- The procurement lends itself to a firm, fixed-price contract, and the selection of the successful bidder can be made on the basis of lowest price among responsive bids and responsible bidders;
- No discussion with bidders is needed either before or after bid submission.

**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. Both the IFB and the submitted 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).

**Bids:** Written bids required. Sealed bids are to be identified as bids by the bidder and will 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 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. As a general rule, bidding time (time from bid release to bid opening) will not be less than fifteen (15) calendar days in order to allow sufficient time to prepare bids prior to bid opening.

**Contract Specifications/Statement of Work:** Specifications defining the items or services sought shall be outlined, in detail, by the requesting department. The specifications must be complete, adequate and realistic. Specifications must not only describe the product, but must also include reliability and quality assurance requirements. Any required criteria for inspecting, testing and accepting the product shall also be included in the specification. The nature and extent of items and/or services requested will be limited to only that deemed necessary to meet the needs of the user department. Specifications will encourage full and open competition, and must not rule out one or more vendors or favor a particular vendor. Therefore, use of brand names in specifications is allowed solely for the purpose of providing a standard for quality performance. When requesting a "brand name or equal" CDTA shall carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

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

- **Construction and Maintenance:** Multiple written bids/proposals are required. Bids must come from responsible bidders and be responsive. State and federal provisions apply and the insurance requirements are stringent. Appendix A and Appendix B of this Manual must be used. American Institute of Architects (AIA) terms with supplemental conditions may be included.
- **Goods and Commodities:** Multiple written bids/proposals are required for these purchases. Bids must come from responsible/responsive bidders. Bids must be submitted in the form and manner prescribed in the IFB/RFP. State and federal provisions apply and the insurance requirements are stringent. Appendix A and Appendix B must be used.
- **Bus Purchase:** Multiple written bids/proposals are required. Bids must come from responsible/responsive bidders. Bids for buses must conform to 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. Appendix A and Appendix B must be used.
- **Transportation and Operational Services:** Procurements of this type are usually the subject of an RFP because

factors other than price will be considered as a basis for an award.

- **Technology:** Multiple written bids/proposals are required. Bids must come from responsible/responsive bidders. State and federal provisions apply and insurance requirements are stringent. Appendix A and Appendix B must be used.
- **Services and Consultants:** Where selection is based exclusively on price, an IFB for services requires multiple written bids/quotes/proposals. 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, where award will be based on factors other than price, the Mini Purchase or RFP procedures must be used. State and federal provisions apply and insurance requirements are stringent. Appendix A and Appendix B must be used.

**Pre-Bid Conference:** When the proposed contract is for large purchases or construction; a pre-bid conference may be held about two (2) weeks before the bid opening. This is an opportunity for prospective bidders to ask questions about plans, specifications, and commercial language requirements.

**Addenda:** Changes in the procurement as a result of the pre-bid conference or that are initiated at the discretion of CDTA will be provided to all prospective bidders in the form of an addenda.

**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 his/her designee will enter each bid and the amount of the bid deposit on a bid tabulation sheet that they 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 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 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.

**Contract Award:** The following measures will be taken to support any contract award in response to an IFB:

- 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 Project Manager/Contracting Officer will also review references and other pertinent information to ensure bidder responsibility.
- Non-responsive and non-responsible bids shall be rejected. Late bids shall be returned to the bidder unopened. At all times, CDTA retains the right to reject any or all bids and will document the sound business reasons for the bid rejection.
- The low bidder may be allowed to withdraw, provided the bidder can identify and demonstrate an error in the bid.
- Award will be made by the Director of Procurement of any contract valued at less than \$200,000 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.
- 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.
- Contract awards based on a contractor submitting a low bid shall be contingent on the vendor/contractor submitting satisfactory evidence of financial responsibility. Such evidence may take one of the following forms: audited financial statements and a Certificate of Responsibility from the contractor, a previous financial disclosure dating from no more than six months prior to the IFB, combined with a certification from the vendor/contractor; a completed Contractor Responsibility Questionnaire form and certification from the contractor.



- 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.
- After the contract has been signed and returned with all necessary documentation (insurance certificates, performance bond) and considered formally awarded by CDTA,) the contractor is notified by the Project Manager. Notices to Proceed are signed by the Project Manager or his designee.

**Contractor Selection Procedures:** In addition to determining bidder/proposer responsibility when drafting procurement documents, CDTA shall consider the following criteria in contractor selection: 1) Is technically qualified to perform the proposed work; 2) Has, or can secure adequate financial resources to perform the proposed work or deliver the proposed goods; 3) Is able to comply with the delivery or performance schedule, taking into account all existing business commitments; 4) Has a satisfactory record of past performance; 5) If selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts. Qualifications may include the length of time a firm has been in business, the expertise and experience of staff and the bidder's experience with projects of similar scope and size. Appropriate business references shall also be required.

#### b. Request for Proposals (RFP)/Competitive Negotiations

Competitive negotiation is generally used when conditions are not appropriate for use of sealed bids. As costs become less important in relation to other factors driving the procurement, competitive negotiation becomes a more appropriate procurement tool. In competitive negotiation, proposals are requested from a number of sources. Negotiations are normally conducted with more than one of the sources submitting offers. Either a Fixed-Price or Cost Reimbursable type contract is awarded in this type of procurement.

This method of procurement is the preferred method for acquisitions of twenty-five thousand dollars (\$25,000) or more when one or more of the following factors is present:

- The desired goods or services cannot be precisely defined, described or standardized.
- The desired end product is conceptual in nature.
- A Cost Reimbursement type contract is contemplated.
- Discussions concerning the technical aspects and price negotiations are intended.
- Offerors are to be given the opportunity to revise the price or technical aspects of their proposal.
- Price alone cannot be the determinative factor in award. Quality, qualifications, performance data, or other contractual factors are to be considered in selecting the most advantageous offering.
- Artistic or aesthetic values supersede price as primary selection criteria.

**Proposal Requirements:** Publication of an RFP 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. Both the RFP and proposal are required to be in writing. All proposal evaluation factors will be identified along with their relative importance. CDTA will have a method in place for conducting the technical evaluation of the proposals received and for selecting awardees.

**Best Value:** In determining which proposal is most advantageous, CDTA may award (if consistent with current New York State Law) to the proposer whose proposal offers the greatest business value to CDTA based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive the "best value". If CDTA elects to use the "best value" selection method as the basis for award, "the solicitation must contain language that establishes that an award will be made on a "best value" basis. If utilizing the "best value" method CDTA will take into consideration the most beneficial combination of qualifications, services and cost and who has met the requirements of the RFP.

**Preparation of Request for Proposals (RFP):** The RFP document will be organized to include: Information for proposers, Required Forms (including sufficient data to determine the responsibility of the proposer), Required Contract Clauses,



the Contract Agreement, and the Scope of Work or Specifications.

**Contract Specifications/Statement of Work:** Specifications defining the items or services sought shall be outlined, in detail, by the requesting department. The specifications must be complete, adequate and realistic. Specifications must not only describe the product but must also include reliability and quality assurance requirements. Any required criteria for inspecting, testing and accepting the product shall also be included in the specification. The nature and extent of items and/or services requested will be limited to only that deemed necessary to meet the needs of the user department. Specifications will encourage full and open competition and must not rule out one or more vendors or favor a particular vendor. Therefore, use of brand names in specifications is allowed solely for the purpose of providing a standard for quality performance. When requesting a “brand name or equal” CDTA shall carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

**Required Contract Clauses and Agreement:** CDTA General Counsel advises as to state and federal requirements governing the procurement and will provide contract forms and appendices to be used, where appropriate. General Counsel will also advise and require all necessary indemnity and insurance provisions. The Director of Procurement and/or purchaser will consult with General 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.

**Information to Proposers and Required Forms:** The Director of Procurement will prepare 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.

**Questions on an RFP:** Although questions 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 must be answered for all firms requesting the RFP through an addendum (see IFB procedure). Changes in the procurement specifications or requirements will be provided to all prospective proposers in the form of an addenda. Anyone making contact by or on behalf of a vendor/contractor (lobbying or selling) is required to be disclosed to CDTA. CDTA staff/members are required to make a record of all contacts by non-disclosed lobbyists once an RFP has been undertaken.

**Proposal Opening:** Proposals must be in writing. Proposal openings are not open to the public. Multiple proposals must be obtained from an adequate number of qualified sources (at least two). The evaluation process to be followed will be generally outlined in the RFP document. Proposals that are received or submitted after the scheduled time due will be returned to the proposers unopened. Non-responsive and non-responsible proposals shall be rejected. In the event of protest the matter will be referred to the General Counsel for investigation. The Chief Executive Officer shall resolve all protests and his/her decision shall be final. Proposals must meet the following requirements:

- Construction procurements based on 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, state and federal provisions apply and the insurance requirements are more or less stringent depending on the value of the project and other relevant factors.
- 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 sole-source procedures must be justified. State and federal provisions apply.
- Proposals for buses must conform to the requirements set forth in the RFP and such procurements will usually be

- more appropriate for an IFB. State and federal provisions apply. Appendix A and Appendix B must be used.
- Multiple written proposals are required for operational services purchases, or the Sole-Source procedures must be justified. State and federal provisions will apply. Contract forms have been posted in the RFP. Appendix A and Appendix B must be used. Because of the nature of this work, there are stringent insurance requirements.
- Technology: An RFP is generally not appropriate for generic items where price competition is available. For specialty items, like proprietary technology, 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. State and federal provisions apply. Appendix A and Appendix B must be used.
- Multiple proposals are required for consultant services. 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. State and federal provisions apply, and the insurance requirements may be stringent depending on the type of work. Appendix A and Appendix B must be used.
  - To comply with The Brooks Act, proposals will be evaluated in all areas except price. Price will be provided in a separate sealed envelope. CDTA will then open the pricing envelope for the most qualified offeror and begin to negotiate price. Failing agreement on price, CDTA will begin negotiation with the next most qualified offeror until agreement is reached on price that is fair and reasonable. If CDTA is unable to reach agreement with any offeror, a new RFP must be issued. CDTA may not reopen negotiations with any offeror during the initial procurement process.

#### Post-Proposal Conference:

When the proposed contract is for large-scale purchase of goods or services, a conference may be held after proposals are received. This is an opportunity for prospective proposers to ask questions about the scope of work, specifications or other commercial language requirements.

**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 Chief Executive Officer for consideration. At all times CDTA retains the right to reject any or all proposals.

**Contractor Selection Procedures:** In addition to determining bidder/proposer responsibility when drafting procurement documents, CDTA shall consider the following criteria in contractor selection: 1) Is technically qualified to perform the proposed work; 2) Has, or can secure adequate financial resources to perform the proposed work or deliver the proposed goods; 3) Is able to comply with the delivery or performance schedule, taking into account all existing business commitments; 4) Has a satisfactory record of past performance; 5) If selected, would not result in a conflict of interest, with regard to other work performed by the firm, or individual staff conflicts. Qualifications may include the length of time a firm has been in business, the expertise and experience of staff and the bidder's experience with projects of similar scope and size. Appropriate business references shall also be required.

**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 recommended for award. Award will be made by the Chief Executive Officer of any contract valued at less than \$200,000 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 based on the form included in the RFP along with all required state and federal provisions. Scope of the work, price, rates and terms for payment will be

described in detail as negotiated by the parties. After the contract has been formally awarded by CDTA, signed and returned with all necessary documentation (insurance certificates, performance bond, etc.) the contractor is notified by the Project Manager. Notices to proceed are signed by the Project Manager or his/her designee. Before the contractor can begin work, it must sign the contract and comply with the contract requirements.

#### c. Sole or Single Source (Non-Competitive Negotiations)

Non-competitive negotiation involves procurement through solicitation of a proposal from a sole source, or, after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with this section.

Procurement by non-competitive negotiation may be used only when procurement is infeasible under other methods and at least one of the following circumstances applies:

- The item is only available from a single source;
- A public exigency or emergency exists whereby the urgency for the requirement will not permit a delay resulting from competitive solicitation;
- The FTA authorizes non-competitive negotiation (for Federally-funded contracts only);
- After solicitation of a number of sources, competition is determined to be inadequate;
- Infeasible to use small purchase, sealed bid, or competitive procurement;
- Cost and price analysis are required.

When the CDTA makes purchases associated with Capital Maintenance items as defined in 49 U.S.C. 5307 (a)(1) that is procured directly from the OEM CDTA must certify to the FTA that this is the only source available and that the price is no higher than for like customers.

#### d. Purchases from Preferred Sources:

As provided by NYS Finance Law section 162, CDTA will procure from certain sources that have been designated as “preferred” by the NYS Office of General Services, provided that the goods and/or services provided by the preferred source meet required levels of form, fit and functionality, federal funding is not included, and provided that the price quoted by the preferred source does not exceed the prevailing market price as determined by CDTA by more than 15%. 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 after bids are opened. The preferred source will be given three (3) days to provide the quote. 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 within 15% of what is determined to be the prevailing market price.

### 3. Additional Procurement Considerations:

#### 1. Purchase of Environmentally Preferred Products:

As provided by New York State Executive Orders 134, 142 & 4, CDTA will procure products that are 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 continued understanding of green procurement.

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

## 2. Procurement Card:

CDTA has made a corporate credit card available to designated employees for the purpose of making purchases for the company. Such credit cards may be issued to facilitate operating requirements and achieve lower acquisition 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 \$2,000 per transaction for Senior Buyer and \$4,000 per transaction for Director of Procurement 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.

## 3. Price Splitting:

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

## Section IV: Protest Procedures

The following Protest procedures apply to both the pre-and post-bid stages of procurement, both of which contain elements that may be subject to protest. If the pre-bid stage has passed and no protest or appeal has been filed in accordance with the regulations set forth herein, the pre-bid elements will no longer be subject to appeal. When the post-bid procedure begins, only issues that have become evident through the opening of the bids are subject to appeal. Any issue which falls within the definition of a pre-bid element cannot be appealed during the post-bid stage unless said issue is only detectable by award of the bid.

CDTA must notify FTA of written protests in all instances when FTA funds are involved in the procurement for which the protest is being filed. CDTA will continue to inform the FTA of the status of any protests. If CDTA denies a protest it will notify the FTA Regional Administrator. The following information will be provided to the FTA:

- a. A list of protests involving third party contracts and potential third-party contracts that:
  - ✓ Exceed \$100,000
  - ✓ Controversial matter, irrespective of amount
  - ✓ Highly publicized matter, irrespective of amount
- b. Information about each protest:
  - ✓ Brief Description of Protest
  - ✓ Basis of Disagreement
  - ✓ If open, how far the protest has proceeded
  - ✓ If resolved, the agreement or decision reached
  - ✓ Whether an appeal has been taken or is likely to be taken

The information will be provided to the FTA in the next quarterly Milestone Progress Report and at the next Program Management Oversight Review, if any.

All appeals and protests must be in writing and must be marked "Protest" and sent via certified mail or courier to the following address:

Capital District Transportation Authority  
ATTENTION: Chief Executive Officer  
110 Watervliet Avenue  
Albany, NY 12206

Protests must be received within five (5) days of notification of intent to award.

CDTA assumes no responsibility for appeals or protests that do not reach the Chief Executive Officer's office on a timely basis.

No awards will be made until all bid protests are resolved.

Failure to maintain strict compliance with these procedures as set forth herein will result in automatic disqualification of the protest.

### *Pre-Bid Opening Protests*

If a bidder can demonstrate that the specifications issued by CDTA are unduly exclusionary and restrictive, or that Federal, state or local laws or regulations have been violated during the course of the procurement process, the bidder may seek a review by the Chief Executive Officer or his appointed representative. Pre-bid opening protests shall be clearly identified "Protest" and submitted in writing to CDTA as early as possible, but in no event later than five (5) days prior to the date of bid opening. Within four (4) business days after receipt of a pre-bid/proposal protest, the Chief Executive Officer shall make one of the determinations outlined in the Rulings on Protests section below.

### *Post-Bid/Proposal Opening Protests*

If a bidder has grounds to protest the acceptance or rejection of any or all offers or bids to a contract, or to the award thereof, or to any such action proposed or intended by CDTA, the bidder must formally submit a written protest to CDTA's Chief Executive Officer no later than five (5) business days after the bid/proposal opening date, outlining in detail the action or the proposed or intended action to which he/she protests. Within ten (10) business days after receipt of a post-bid/proposal protest, the Chief Executive Officer shall make one of the determinations outlined in the Rulings on Protests section below.

### *Rulings on Protests*

The Chief Executive Officer shall render one of the following determinations:

- Protest is overruled.
- Protest is substantiated. The Chief Executive Officer shall issue instructions to remedy issues relating to the protest.
- Procurement activity is suspended until further written notification by the Chief Executive Officer.

The determination shall be in writing and shall provide, at a minimum, a general response to each material issue raised in the protest. All documents submitted by the protestor and/or CDTA staff and reviewed by the decision-maker in the determination and shall be retained by CDTA as the formal record of the dispute resolution process.

The issuance of the foregoing determination is CDTA's final decision of the dispute.

All interested parties (including the successful bidder, all rejected bidders and any other parties which CDTA in its sole discretion determines are interested parties) shall be notified of any protests that are filed.

CDTA shall refrain from awarding a contract within five (5) days of the date a decision is rendered by the Chief Executive Officer regarding a protest, unless CDTA determines that any one or more of the following criteria exist:

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

#### *Protestor's Appeal to the FTA*

CDTA is alone responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the CDTA of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state or Federal authority having proper jurisdiction.

The CDTA will notify the FTA when it receives a protest for procurements that are federally funded. If CDTA denies a protest the FTA will also be informed.

#### Appendices

Appendix 1: Procurement Checklist

Appendix 2: Prompt Payment Policy

Appendix 3: Disposition of Property Guidelines

Appendix 4: Code of Ethical Conduct

Appendix 6: Contract Administration

Appendix 7: New York State Required Clauses

Appendix 8: Federal Required Clauses



## Appendix 1: Procurement Checklist

Pre-Procurement			Board Approvals (as required)		Oversight of Third Party Contracts	
Advertising-Contract Reporter, 6 local papers, Minority Pubs, Specialty Trades, Etc			Agenda Action Item		Review Contracts Issued by Prime to Ensure:	
Copy of IFB/RFP to include:			Contract Award Certification		Suspension & Debarment Requirement	
Protest Procedures			Signed Board Resolution		Prompt Payment Clauses	
No Geographic Preference (except A/E)			Contract Phase		Flow Down of Other Federally Required Clauses	
No Excessive Bond Requirements			Notice to Proceed		Project Kick Off Meeting to Ensure:	
Specs not exclusionary (no brand names)			Executed Agreement		Subcontractors understand prompt payment	
Appendix A-NYS Clauses			Insurance Listing CDIA as Add'l Insured		Subcontractors have CDIA contact info for prompt payment concerns	
Appendix B-Federal Clauses			Proof of Workers Compensation Insurance		Subcontractors have CDIA contact info for prompt payment concerns	
Prevailing Wages as Applicable			Performance/Payment Bonds for construction over \$100K		Explain to Primes requirements for proof of prompt payment	
Independent Cost Est from Project Mngr			List of Subs and % of Contract Performed by ea		Explain reporting requirements to Primes: EO162, Pay to Subs	
Justification for Non-Competitive Award			MWBE Certs for Primes/Subs		Other Requirements	
During Procurement			DBE Certs for Primes/Subs		Contract Administration System In Place	
Addenda			SDVOB Certs for Primes/Subs		Record of Procurement History	
Bid/Proposer List			Required Forms for Rolling Stock		Logged on NYS Website >\$25,000	
Pre-Bid/Proposal Mtg Details			Bus Testing & Certification >\$100,000		Notification of OSC >\$1,000,000	
Complete Prior to Award			TVM Certification		Post Bid Results on www.cdta.org	
Print Screen from Sams.gov >\$25,000			Pre-Award Audit		Notify Unsuccessful Proposer of Award	
Documentation of Reference Check not needed for incumbent or recent vendor			Pre-Award Buy America Certification		Return Bid Bonds for Construction Project to Unsuccessful	
Cost or Price Analysis & Engineer Concurrence as Applicable			Pre-Award Purchaser Requirements		Calendar at least 3 mo before contract expires	
Bid Summary or Scorecards			Post Delivery Audit		Log Vehicles to FTA Survey Monkey within 30 days	
			Post Delivery Purchaser Requirement >\$150,000			
			Post-Delivery Buy America >\$150,000			

During Procurement			SDVOB Certs for Primes/Subs		Logged on NYS Website >\$25,000	
Addenda			Required Forms for Rolling Stock		Notification of OSC >\$1,000,000	
Bid/Proposer List					Post Bid Results on www.cdta.org	
Pre-Bid/Proposal Mtg Details			Bus Testing & Certification >\$100,000		Notify Unsuccessful Proposer of Award	
Complete Prior to Award			TVM Certification		Return Bid Bonds for Construction Project to Unsuccessful	
Print Screen from Sams.gov >\$25,000			Pre-Award Audit		Calendar at least 3 mo before contract expires	
Documentation of Reference Check not needed for incumbent or recent vendor			Pre-Award Buy America Certification		Log Vehicles to FTA Survey Monkey within 30 days	
Cost or Price Analysis & Engineer Concurrence as Applicable			Pre-Award Purchaser Requirements			
Bid Summary or Scorecards			Post Delivery Audit			
			Post Delivery Purchaser Requirement >\$150,000			
			Post-Delivery Buy America >\$150,000			
Bid Bond for construction over \$100K must be submitted w bid			On-Site Inspector's Report Purchase of 10+ Vehicles			
Buy America Certs for Rolling Stock AND Steel, Iron, Mfg Products - Must submit w bid			FMVSS Pre-Award & Post Delivery			
Evaluation of Options			Forms Required for All Procurements			
Financial Review as Applicable			Standard Form LLL & Quarterly Updates for >\$100,000 and engages in Lobbying			
Negotiation of Profit for Contracts w No Price Competition			Lobbying Certification >\$100,000			
Responsibility Determination Checklist			Disclosure of Contacts			
			Certificate of Non-Discrimination in Ireland			
			Non-Responsibility Determination for RFP's			
			Non-Collusion Certificate			
			Certificate of Compliance			
			Statement on Sexual Harassment			
			EO16			
			ST-220-CA Contractor Certification to Covered Agency			

## Appendix 2: Prompt Payment Policy

These guidelines detail the operating policy and standards regarding the prompt payment and accrual of interest penalties for late payment of invoices submitted by firms and organizations doing business with the Capital District Transportation Authority and its subsidiaries (hereafter referred to as “CDTA”).

### *1. Purpose*

These prompt payment guidelines are intended to:

- a. Provide a statement for each category of contract regarding a description of the procedure to be followed by each contractor in requesting payment of an invoice. Such statement will also include a schedule of the timing that CDTA will make prompt payment; a declaration that interest will be paid when prompt payment is not made and the rate at which the interest penalty will accrue; a listing of the sources of funds available to CDTA to pay an interest penalty; and a list of facts and conditions which reasonably justify extension of the date by which invoice payments must be made in order for CDTA not to become liable for interest penalty payments for each type of contract.
- b. Establish practices needed to comply with reporting and public access requirements pursuant to subdivision eleven (11) and twelve (12) respectively of Section 2880-Prompt Payment-of the Public Authorities Law.
- c. Set forth various entities to which and situations under which the CDTA Prompt Payment Policy would be inapplicable.
- d. Assure that the CDTA’s exposure to interest penalty payments is kept to a minimum with the intent of safeguarding the assets of CDTA.

### *2. Categories of Contracts*

- a. Vehicles, Vehicle Parts & Supplies: Includes, but not limited to buses and other revenue vehicles, non-revenue vehicles, bus & vehicle parts, repairs to all vehicles, fuels and lubricants, antifreeze, all related freight charges, and other vehicle related items.
- b. Operating/Office Equipment & Supplies: Includes, but not limited to shop & garage repair equipment and tools, power generation and delivery equipment, radio equipment and maintenance, computer hardware/software equipment and maintenance, office furniture and equipment, treasury supplies and equipment, bus wash equipment and supplies, and all related freight charges.
- c. Rental & Lease Agreements: Includes, but not limited to tire service/lease, copy and mailroom equipment, office space, uniforms and all other rental and lease agreements.
- d. Professional & General Services: Includes, but not limited to financial and banking services, consulting services, legal services, and all other professional and general services.
- e. Utilities: Includes, but not limited to gas & electric charges, water & sewage and telephone/communication charges.
- f. Construction projects: Includes but not limited to building construction, renovation and maintenance, parking lot and garage facilities, bus shelters, signals and signs, fencing, storage tanks and all repairs relating to building and ground facilities, all related freight charges and all other construction and renovation projects including related supplies.



### *3. Procedures for Requesting Payment Under Contracts*

a. For all categories of contracts listed in Section 2 of this policy, contractors must submit a “proper invoice” as required, to the following designated payment office to initiate any payment:

Capital District Transportation Authority  
110 Watervliet Avenue  
Albany, NY 12206  
Attn: Finance Department-Accounts Payable  
Or Email to [accountspayable@cdta.org](mailto:accountspayable@cdta.org)

b. A “proper invoice” is defined here as a written request for payment setting forth the CDTA purchase order number, description, quantity and price of goods or property delivered or services rendered to CDTA. Contractor invoices covering labor on public work contracts must include complete and accurate certified payrolls.

c. For all categories of contracts listed in Section 2 of this policy and notwithstanding any other contract agreements to the contrary, it is CDTA’s intent to make payment of vendor/contractor invoices within thirty calendar days, excluding legal holidays, after receipt of a proper invoice in the Finance Department or the date on which CDTA received the purchased goods, property or service covered by the proper invoice, whichever is later. When prompt payment is not made as described above and vendor/contractor has satisfied all requirements of this policy, interest will be paid by CDTA upon receipt of a written request therefore from the contractor/vendor within one year of and for a period of up to one year from the date such interest would commence to accrue under this policy.

d. Interest shall be computed at the rate equal to the rate set by the New York State Tax Commission for Corporate Taxes pursuant to paragraph one of subsection (e) of section one thousand (1096) of the tax law. Interest shall be computed from the date the Prompt Payment period expires and will terminate upon the date of mailing a payment by CDTA to the contractor/vendor by regular, registered or certified mail or hand delivered to the contractor/vendor, such method to be determined by the sole judgement of CDTA.

e. For all categories of contracts listed in Section 2 of this policy, the sources of funds available to CDTA to pay any interest penalty on invoices not paid within the prescribed time-period of thirty calendar days after receipt of invoice in the Finance Department are limited to the following:

1. Passenger Revenues
2. Advertising Revenues
3. Mortgage Tax Receipts

### *4. Facts and Conditions Extending Payment Dates*

The following list of facts and conditions do reasonably justify extension of the date by which invoice payments must be made for CDTA not to become liable for interest penalty payments.

- a. In accordance with specific statutory or contractual provisions, payment must be preceded by an inspection period or by an audit to determine that the resources applied by a vendor/contractor are in accordance with such statute or contract. Categories of contracts subject to this provision are those listed under Section 2, subparagraphs a, b, d and f of this policy.
- b. The necessary New York State government appropriation required to authorize payment has yet to be enacted. Categories of contracts subject to this provision are those listed under Section 2, subparagraphs a, b, d, and f of this policy.

- c. A proper invoice must be examined by the Federal Government prior to payment. Categories of contracts subject to this provision are those listed under Section 2 of this policy.
- d. A proper invoice representing a partial shipment of goods or property delivered or service rendered and not submitted in accordance with a specific contractual provision will be accepted and processed for payment only in instances where prior authority has been granted to the contractor/vendor to make partial shipments and billings. Such authority will be communicated to the contractor/vendor either directly on the CDTA purchase order or through contact with the CDTA Procurement Department. In instances where CDTA has put the contractor/vendor on notice that full shipments must be made-partials not accepted-partial invoices will not be processed for payment until final invoice is received and CDTA will not be liable for any interest penalty on these partial invoices. Categories of contracts subject to this provision are those listed under Section 2 of this policy.
- e. Contractor invoice submitted for payment covering contracts with retainage provisions will be processed according to contract provisions or in accordance with Section 3, subparagraph b of this policy with the exception that the amount computed as retainage will not be remitted or subject to any interest penalty payments until thirty calendar days after such time as contract is completed to the satisfaction of CDTA officials. Categories of contracts subject to this provision are those listed under Section 2, subparagraphs a, b, d, and f of this policy.
- f. Contractor invoices submitted for payment covering changes in work scope and/or additional goods and property delivered, or services rendered from original contract and properly authorized may be held until such time as situation is investigated and proper approvals obtained. Categories of contracts subject to this provision are those listed under Section 2 of this policy.
- g. The date by which CDTA must make contract payment is modified in accordance with the provisions of Section 5 below. All categories of contracts listed under Section 2 of this policy are subject to this provision.

In general, except for subparagraph G above, any time taken to rectify or satisfy any of the facts and conditions listed in subparagraphs A-F of this section shall extend the date by which contract payment must be made in order for CDTA not to become liable for interest payments by an equal period of time.

#### *5. Defects in Goods, Services, Invoices*

a. CDTA will have fifteen calendar days, excluding legal holidays, after receipt of a proper invoice to notify each vendor/contractor of the following: (1) defects in the delivered goods, property, or services (2) defects in the invoice and/or claim voucher (3) suspected improprieties of any kind. The existence of such defects or improprieties shall prevent the commencement of the time-period specified in Section 3, subparagraph C of this policy for payment of invoices. When CDTA fails to notify a contractor of such defects or suspected improprieties within fifteen calendar days of receiving the invoice, claim voucher or goods, the number of days allowed for payment of the corrected proper invoice, after suspected improprieties and other defects have been resolved, will be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the contractor.

b. If CDTA fails to provide reasonable grounds for its contention that a defect or other impropriety exists, the date by which contract payment must be made for CDTA not to become liable for interest payments shall be calculated from the date of receipt of any invoice and claim voucher.

#### *6. Reporting and Public Access Requirements*

a. Annually, within ninety days after the completion of its fiscal year, CDTA shall prepare a report on the scope and implementation of its prompt payment policy. Such report shall include a listing of the categories of contracts which CDTA

entered during the preceding fiscal year along with an indication of whether each category of contract was subject to the prompt payment requirements set forth in this policy. Also included in the annual report will be the number and amounts of interest payments made on contracts arranged according to each category; the number of interest chargeable days and the total number of days taken to process each late contract payment; and a summary of the principal reasons why such late payments occurred. Copies of the annual report shall be filed with the New York State Comptroller, State Director of Budget, Chair of the Senate Finance Committee and the Chair of the Assembly Ways and Means Committee via The Public Authorities Reporting Information System (PARIS).

b. CDTA shall make available to the public upon written request a copy of this policy and the associated annual report. Further, each vendor/contractor doing business with CDTA shall be given a copy of this prompt payment policy.

## *7. Other Considerations*

a. Inapplicability of this policy: The provisions of this policy shall not apply to payments due and owing by CDTA:

1. Under the eminent domain procedure law
2. To the Federal Government/ to any State Agency or its instrumentalities; to any duly constituted unit of Local Government including, but not limited to, counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities, to any other Public Authority or Public Benefit Corporation; or to CDTA employees when acting in, or incidental to, their public employment capacity;
3. In situations where CDTA exercises a legally authorized set-off against all or part of the payment due the vendor/contractor. Set-off means the reduction by CDTA of a payment due a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to CDTA.

b. As host agency for the Capital District Transportation Committee, the Prompt Payment Guidelines stated within this policy are intended to apply to contractor. Vendor payments made by CDTA on behalf of the CDTC where applicable. Further, CDTC shall not be liable for interest penalties due to the process time taken by CDTA.

c. CDTA shall have the power to modify this policy at any time by promulgating amended rules and regulations. It is intended that all of the forgoing policy guidelines comply with Section 2880-Prompt Payment-of the Public Authorities Law as amended.

## Appendix 3: 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 and the purchaser of 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.
- vi. a. An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
- i. Any personal property which has an estimated fair market value in excess of fifteen thousand dollars;
  - ii. 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;
  - iii. 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;
  - iv. 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
  - v. 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 the Director of Finance who will then notify FTA and make reimbursement arrangements.

The guidelines are subject to modification and amendment at the discretion of the Authority Board and shall be filed annually with the New York State Comptroller on or before the 31<sup>st</sup> of March.

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.

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 31<sup>st</sup> of March.

The designated Contracting Officer for the Authority is the Director of Procurement.

## Appendix 4: Code of Ethical Conduct

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.

### *1. 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 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 during 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 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 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 gifts of more than nominal value or travel expense reimbursements from a disqualified source.
- o. Members must not accept honoraria from a disqualified source.

## *2. Definitions:*

- a. **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.
- b. **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 CDTA. This includes, without limitation, personal meetings, telephonic communications, letters, faxes and e-mails.
- c. **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.
- d. **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.
- e. **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 CDTA; (ii) attempts to lobby or to influence action or positions on legislation or action on regulations or rate making before CDTA; (iii) is involved in litigation, adverse to the State, with CDTA and no final order has been issued; (iv) has received or applied for funds



from CDTA at any time during the previous calendar year, up to and including the date of the proposed receipt of honoraria.

### *3. 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.

### *4. 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"), agents of CDTA, members of immediate family including his or her partner and any organization that employees or is about to employ persons from any of these categories.

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.

### *5. 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 a disqualified source including 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 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 CDTA to the Ethics Officer. Employees may file ethics complaints anonymously and are protected from retaliation by the policies adopted by CDTA.
- p. Certain employees must not engage in certain political activities.

#### *6. Definitions:*

- a. **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.
- b. **Gift** - means the transfer, without equivalent consideration, of anything 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.
- c. **Vendor or Contractor** – means any individual or entity seeking to or doing business with CDTA.
- d. **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 CDTA. This includes, but is not limited to, personal meetings, telephonic communications, letters, faxes and e-mails.
- e. **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.
- f. **Travel Expense** – means an expense related to travel, including, but not limited to, airfare, meals and lodging related to the employee's official duties.

## *7. Procedures:*

1. All outside employment or any other activity that may create a conflict of interest must be approved by the Chief Executive Officer 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 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.

## *8. 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.

## *9. 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.

## *10. 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 CDTA except by resolution adopted by two-thirds vote of the members in attendance at a meeting of CDTA upon a showing that such contract is in the best interest of 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.

### *11. Vendor Code of Ethics:*

1. Each procurement solicitation issued by CDTA will identify 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 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.

## **Appendix 5: Contract Administration**

### **Contract Administration Functions**

Contract administration is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing on any changes or amendments that may arise during its implementation or execution. It can be summarized as the process of systematically and efficiently managing contract creation, execution, and analysis for the purpose of maximizing financial and operational performance and minimizing risk.<sup>1</sup> CDTA seeks to ensure that the proper allocation and management of public funds is assured in part by implementing a contract administration framework.

### *1. Roles:*

**Director of Procurement** – Reporting to the Chief Operating Officer, the Director of Procurement ensures that the procurement process adopted by CDTA has been followed, and also serves as the single point of contact during the procurement process.

**Project Manager** – Reporting to their direct supervisor or department head, the Project Manager (PM) is the person responsible for the successful delivery of the project.

**General Counsel** – Reporting to the Chief Executive Officer, General Counsel assists procurement in any legal matters or negotiations that arise with the contract. Counsel also reviews the contract as to form prior to execution by the Chief Executive Officer.

**Chief Executive Officer (CEO)** – Reporting to the Board of Directors, the CEO has the final decision and the authority to execute the contract.

**Contractor** – The contractor submits the contract for execution by CDTA along with any requirements of the contract (i.e. Insurance, bonding, etc). The contractor is also bound to follow all timetables, work processes, payment terms and reporting requirements that are contracted for.

### *2. Project Initiation:*

The first step to be taken by CDTA will be to designate a Project Manager for each project involving a contract. This individual will be the primary contact with the contractor (post procurement) and is the only individual who, with proper consents and documentation, can authorize changes to the contract. In most cases, this individual will be the staff member who led the procurement process for the project.

### *3. Monitoring Contractor Progress:*

The CDTA Project Manager shall establish frequent and direct communications with the contractor. For complex projects and/or projects which require more extensive periods of time to complete, CDTA may establish regular progress meetings with CDTA and the contractor. Such meetings will assist in identifying and correcting problems as they arise.

The Project Manager shall monitor contractor progress to ensure that the maximum allowable contract amount is not exceeded and that funds are not paid to the contractor in an amount greater than either the percentage of work completed or actual costs incurred.

### *4. Progress Payments:*

When contractor invoices are submitted to CDTA, the Project Manager shall compare the invoices to the contract document to ensure accuracy and compliance with the price information outlined in the contract and prevailing wages if applicable. Based on the review, the Project Manager shall and approve or disapprove the contractor's requests for payments.

### 5. *Modifying an Existing Contract:*

Occasionally, there are reasons where the terms of an existing contract will need to be modified. The following represent various modification scenarios and related documentation requirements:

1. Modification to extend term (where options to extend are in original contract) – The Director of Procurement will notify the Project Manager of a contract that is expiring. The Project Manager will respond if the contract should continue and if so, the Director of Procurement will notify the contractor.
2. Modification to extend term (where options to extend are not in original contract) – The Project Manager will provide a renewal request and sufficient materials for Board of Directors approval (if appropriate dollar value reached). This is also known as a sole source justification as outlined in the procurement manual.
3. Additional funding needed for work within the scope of a requirements contract and within the original term of the contract (change orders) – The Project Manager will assemble sufficient materials for Board of Directors approval (if appropriate dollar value reached as per the procurement manual).
4. Increased scope of Work – The Project Manager will assemble sufficient materials for Board of Directors approval (if appropriate dollar value reached as per the procurement manual).

Circular 4220.1G states that *"grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications."* If options were evaluated at the time of contract execution a new cost or price analysis is not required.

### 6. *Terminating a Contract:*

The Project Manager is primarily responsible for making a recommendation to terminate a contract (e.g. termination for convenience or termination for default/clause). The Project Manager provides a written recommendation to the Director of Procurement, who carries out the proceedings with the contractor and CDTA General Counsel.

### 7. *Additional Standard Contract Administration Functions:*

Depending on the nature of the contract (facility construction contract vs. route software maintenance renewal contract) responsibilities of the contract administration function to be performed by the **Project Manager** may include:

1. Review and evaluate contractors' proposals and, when negotiation will be accomplished by the Director of Procurement, furnish comments and recommendations.
2. Ensure timely notification by the contractor of any anticipated over-run or under-run of the estimated cost reimbursement contracts.
3. Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations. (In conjunction with Director of Procurement)
4. Perform engineering surveillance (via design contractors) to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.
5. Ensure timely submission of required reports.

6. Cancel unilateral purchase orders when notified of non-acceptance by the contractor.
7. Accomplish contract closeout procedures.
8. When applicable, monitor contractors' compliance with the requirements of environmental laws and other environmental requirements as specified in the contract.
9. Subject to the Davis-Bacon and Related Act requirements - obtain certified payroll and spot check its accuracy with each payment application from the contractor.

Responsibilities of the contract administration function to be performed by the **Director of Procurement** include:

1. Ensure compliance with Buy America requirements.
2. Issue tax exemption forms, upon request from contractors.
3. Review, evaluate, and approve disadvantaged and women-owned business subcontracting plans.
4. Obtain the contractor's currently approved plan for disadvantaged and women-owned business subcontracting, or, if there is no currently approved plan, assist in developing such a plan if applicable.
5. Send the executed contracts along with a notice to proceed to the contractor copying the Project Manager.
6. Provide the Project Manager with executed originals of the contract along with the certificates of insurance and bonding required.

Responsibilities of the contract administration function to be performed by the **General Counsel** include:

1. Review of all insurance submittals.
2. Approval of contract "to form".
3. Assist in any contract disputes or terminations as needed.

#### *8. Contract Administration Documents:*

Documents resulting as part of contract administration may include, but are not limited to, the following:

1. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements.
2. Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any increases to or decreases to the timeframe or the contract price as a result of those modifications.
3. Documentation regarding settlement of claims and disputes, including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., Board of Directors, Chief Executive Officer) of the settlement amount will be maintained by General Counsel.
4. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default).
5. Documentation relating to contract close-out.

#### *9. Contract Close-Out:*

A completed contract is one that is both physically and administratively complete. A contract is *physically* complete only after all deliverable items and services called for under the contract have been delivered and accepted by the grantee. These deliverable items include such things as reports, spare parts, warranty documents, and proof of

insurance (where required by the contract terms). These deliverable items may or may not have been priced as discrete pay items in the contract, but they are required deliverables, and the contract is not physically complete until all deliverables are made. A contract is *administratively* complete when all payments have been made and all administrative actions accomplished. The steps that must be completed to close out a contract will depend upon the type and/or nature of the contract.

It is generally the responsibility of the Project Manager to establish that the work under a contract has been completed and the contract is ready for closeout. The Project Manager should verify that any outstanding or punch list items are complete, and prepare a checklist or memo indicating the work is complete and any applicable warranty period has started. The Project Manager should notify the Director of Procurement by memorandum that the contract is complete and all required deliverables have been inspected and accepted.

Major elements of the closeout process, and related documentation, might also include:

1. Resolution of all contract changes, claims, and final quantities delivered.
2. Determination/recovery of liquidated damages.
3. Performance of all inspections (and acceptance tests if any), with appropriate documentation.
4. The submittal of all required documentation by the contractor, including such items as:
  - a. Final reports
  - b. Final payroll records and wage rate certifications
  - c. Manufacturer's Warranties and Guarantees
  - d. Final corrected shop drawings
  - e. Operation and maintenance manuals
  - f. Catalogues and brochures
  - g. Resolution of final quantities (construction contracts)
  - h. Final invoice
5. Maintenance Bond (if required).



APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be

required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon the State’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women’s Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017

646-846-7364

email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)

<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.



## Appendix 8: Federal Required Clauses

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## **Access to Records and Reports**

- a. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.
- b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
- d. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

## **Americans with Disabilities Act (ADA)**

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42

U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

## **Bond Requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and

material in the execution of the work provided for in the contract.

It is also understood and agreed that if the bidder should withdraw any part or all of their bid within [90] days after the bid opening without the written consent of the Agency, or refuse or be unable to enter into this Contract as provided above, or refuse or be unable to furnish adequate and acceptable Performance and Payment Bonds, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, it shall forfeit its bid guaranty to the extent Agency's damages occasioned by such withdrawal, or refusal, or inability to enter into a Contract, or provide adequate security thereof.

It is further understood and agreed that to the extent the defaulting bidder's bid guaranty shall prove inadequate to fully recompense Agency for the damages occasioned by default, then the bidder agrees to indemnify Agency and pay over to Agency the difference between the bid guarantee and Agency's total damages so as to make Agency whole.

The bidder understands that any material alteration of any of the above or any of the material contained herein, other than that requested will render the bid unresponsive.

**Performance Guarantee.** A Performance Guarantee in the amount of 100% of the Contract value is required by the Agency to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Contract. The successful Bidder shall certify that it will provide the requisite Performance Guarantee to the Agency within ten (10) business days from Contract execution. The Agency requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the Agency and listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. Agency may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Agency may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

If the Bidder chooses to provide a Letter of Credit as its Performance Guarantee, the Bidder shall furnish with its bid, certification that an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor. The Bidder shall also provide a statement from the banking institution certifying that an Irrevocable Stand-By Letter of Credit for the action will be provided if the Contract is awarded to the Bidder. The Irrevocable Stand-By Letter of Credit will only be accepted by the Agency if:

1. A bank in good standing issues it. The Agency will not accept a Letter of Credit from an entity other than a bank.
2. It is in writing and signed by the issuing bank.
3. It conspicuously states that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. The Agency is identified as the Beneficiary.
5. It is in an amount equal to 100% of the Contract value. This amount must be in U.S. dollars.
6. The effective date of the Letter of Credit is the same as the effective date of the Contract
7. The expiration date of the Letter of Credit coincides with the term of the contract.
8. It indicates that it is being issued in order to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the Agency and the Contractor the work stipulated herein.

The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit and a certificate and draft to the issuing bank's representative at a location and time to be determined by the parties. This documentation will indicate that the Contractor is in default under the Contract.

**Payment Bonds.** A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Agency as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Agency) and listed as a company

currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

### **Bus Testing**

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

### **Buy America Requirements**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

### **Cargo Preference Requirements**

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381.

b. to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### **Changes to Federal Requirements**

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any

information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

### **Charter Service**

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that Recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, “Charter Service,” 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA’s Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA’s Charter Service regulations; or
3. Any other appropriate remedy that may apply. The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

### **Civil Rights Laws and Regulations**

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C 2000d, and U.S. DOT regulation “Nondiscrimination in

Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act, “49 C.F. R. Part 21 and any implementing requirement FTA may issue.

- 1 **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
  - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation), disability, or age, and prohibits discrimination in employment or business opportunity.
  - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21, and 49 U.S.C. § 5332, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin.
- 2 **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
- 3 **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted

programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

- 4 **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

#### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.; and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements, without regard to their race, color, religion, national origin, or sex (including sexual orientation). In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Federal Law and Public Policy Requirements.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; and the Recipient will cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and

Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law.

#### **Clean Air Act and Federal Water Pollution Control Act**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

##### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

##### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

#### **Contract Work Hours and Safety Standards Act**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:



### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

### **Davis Bacon Act and Copeland Anti-Kickback Act**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

### **Debarment and Suspension**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **Disadvantaged Business Enterprise (DBE)**

It is the policy of the Agency and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

#### **Energy Conservation**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

#### **Fly America**

- a) Definitions. As used in this clause—
  - 1) “International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

- 2) "United States" means the 50 States, the District of Columbia, and outlying areas.
- 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

- e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

**Incorporation of Federal Transit Administration (FTA) Terms**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

**No Government Obligation to Third Parties**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum

for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

### **Patent Rights and Rights in Data**

#### **Intellectual Property Rights**

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Agency intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

a. Any subject data developed under the Contract, whether or not a copyright has been obtained;  
and

b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work

required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

#### **Pre-Award and Post-Delivery Audits of Rolling Stock Purchases**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre- award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

#### **Program Fraud and False or Fraudulent Statements and Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

- a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
  - 1) Procure or obtain;
  - 2) Extend or renew a contract to procure or obtain; or
  - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c) See Public Law 115-232, section 889 for additional information.
- d) See also § 200.471.

### **Prompt Payment**

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

### **Public Transportation Employee Protective Arrangements**

The Contractor agrees to comply with the following employee protective arrangements of 49

U.S.C. § 5333(b):

1. U.S. DOL Certification. Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Special Warranty. When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. Special Arrangements. The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

**Restrictions on Lobbying**

Conditions on use of funds.

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

Certification and disclosure.

- (a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
  - (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
  - (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- (b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
  - (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or

- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

- (c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs

(a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
  - (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
  - (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
  - (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,
- Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **Safe Operation of Motor Vehicles**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles,

company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **School Bus Operations**



The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, “School Bus Operations,” 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

#### **Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

#### **Simplified Acquisition Threshold**

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).

#### **Solid Wastes (Recovered Materials)**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **Special Notification Requirements for States**

Applies to States –

- a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
  - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
  - (3) The amount of federal assistance FTA has provided for a State Program or Project.
- b. Documents - The State agrees to provide the information required under this provision in the following documents:
- (1) applications for federal assistance,
  - (2) requests for proposals or solicitations,
  - (3) forms,
  - (4) notifications,
  - (5) press releases, and
  - (6) other publications.

## **Substance Abuse Requirements**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency, or Agency, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 and to submit the Management Information System (MIS) reports to the Agency.

## **Termination**

### **Termination for Convenience (General Provision)**

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### **Termination for Default [Breach or Cause] (General Provision)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### **Opportunity to Cure (General Provision)**

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### **Waiver of Remedies for any Breach**

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### **Termination for Convenience (Professional or Transit Service Contracts)**

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### **Termination for Default (Supplies and Service)**

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services

performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

#### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### **Veterans Hiring Preference**

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

#### **Violations and Breach of Contract**

##### Disputes:

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the agency. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the agencies authorized representative. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the agencies authorized representative shall be binding upon the Contractor and the Contractor shall abide by the decision.

##### Performance during Dispute:

Unless otherwise directed by the agencies authorized representative, contractor shall continue performance under this contract while matters in dispute are being resolved.

##### Claims for Damages:

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### Remedies:

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the agencies authorized representative and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Agency is located.

#### Rights and Remedies:

Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Agency or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

### **OTHER RECOMMENDED CONTRACT REQUIREMENTS**

#### **Conformance with ITS National Architecture**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

#### **Federal Tax Liability and Recent Felony Convictions**

- (1) The contractor certifies that it:
  - (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
  - (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

- (2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

#### **Severability**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

#### **Trafficking in Persons**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;
- (b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or
- (c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

