

Capital District Transportation Authority

Procurement Manual

Capital District Transportation Authority & Subsidiaries

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Albany, NY 12206

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Section I: Overview, Purpose, Applicability and 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, but not limited to, bus parts, support equipment, construction services and professional services.

Purchases involving Federal funds are in compliance with *Federal Transit Administration (FTA) Circular 4220.1F, 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

These Procurement Guidelines 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:

- a) Formalize practices which insure that CDTA interests are protected;
- b) Assure that all federal and state procurement laws and regulations are followed, and
- c) Communicate policies; give guidance to purchasing personnel and to others with delegated purchasing authority.

These Procurement Guidelines have 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. These Guidelines shall be reviewed and approved by the CDTA Board of Directors on an annual basis.

Applicability

The CDTA Procurement Guidelines apply to all commodity, service and professional service contracts procured by CDTA. These guidelines adhere closely to the Federal Procurement Requirements outlined in FTA Circular 4220.1F 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 these Guidelines.

Definitions

When used in these guidelines:

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

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 \$15,000 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.

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 \$3,000. Purchases below this threshold may be made without obtaining competitive quotations if the 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 Business Enterprise (MBE): 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 such ownership interest is real, substantial and continuing. The minority 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 \$15,000, 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.

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.

Women-owned Business Enterprise (WBE): 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 women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing. Women business owners 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. Women-Owned Business Enterprises are certified as such through New York State Department of Economic Development.

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 and Responsibilities

Board of Directors

- Authorize all Contracts in excess of \$100,000 or those that are Single Bid or Sole Source award that exceed \$25,000.
- 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 where the reasonably anticipated value of the Contract is expected to exceed \$100,000.
- Approval of cumulative (sum total) set of change orders that exceeds 20% of the original contract value or \$100,000-whichever is greater.
- For contracts valued below \$100,000, the board will approve any cumulative (sum total) set of change orders that pushes a contract's value over \$100,000.
- Approval of any Contract involving services to be rendered over a period of more than one year with an expected annual value of \$50,000 or more.
- Annual review of all multi-year term Contracts for professional services of fixed or indefinite value that are expected to exceed \$15,000 in annual value.
- Annual review and approval of procurement guidelines and supporting procedures.
- Review all Sole Source awards under \$25,000.

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, Senior Deputy 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.
- 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.

- Serving as the Disadvantaged Business Enterprise Officer (DBE) and Minority and Woman-owned Business (MWBE) officer, and reporting directly to the Chief Executive Officer on all matters related to DBE and MWBE. (Including verification of D/M/WBE subcontracting reporting requirements.)

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.

Vice President of Finance and Administration:

- 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.
- Conducting audits of the procurement function, as required.

Stock Clerks and Inventory Manager:

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

Project Manager/Purchaser:

- Making timely requests to procure goods and services and provide sufficient information to support the request, including formulation of specifications, performance security and termination provisions.
- Ensure that purchase orders are properly authorized and signed.
- 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.

Responsibility of Contractors and Vendors:

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 Economic 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 NYSOGS and GSA Contract Prices and Excess or Surplus Federal Property

If allowed, CDTA may utilize either NYS Office of General Services (OGS) or the Federal General Services Administration (GSA) schedules for the procurement of particular goods and services. The NYS OGS, the Federal General Services Administration 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 make awards 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. Responsive applies to the bid submission and its conformance with the specifications or requirements of the solicitation document.

7. **Written Record of Procurement History**

A properly documented procurement file should be a complete record of procurement actions and should 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 4220.1F, 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 its 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 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 or Price Analysis is a determination that the cost or price offered by a contractor is reasonable, given current market conditions. The purpose of Cost or Price Analysis is to ensure that CDTA does not pay unreasonably high prices. A Cost or Price Analysis must be performed in connection with every procurement. The method and degree of analysis is dependent on facts surrounding the particular 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 minimum 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.

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. 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, the 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:

The 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 the Authority, in its sole judgment, determine it is necessary to do so.

22. Written Protest Procedures:

The CDTA shall include Written Protest Procedures in its solicitations to handle and resolve disputes relating to their procurements. The Authority 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 4220.1F), failure to comply with the 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 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 insure 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 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

the Authority from any further claims by the Contractor. The Contract Administrator/Procurement Personnel shall also obtain a signed receiving and inspection report from the lead dept. 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 or placed in the procurement file. The procurement must be approved by the Director of Procurement, Vice President of Administration 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, if soliciting from only one source a Sole Source justification in writing must accompany the procurement documentation, and prepare a Cost /Price Analysis.

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 a 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 or 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 upon him 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. Buy America Requirements:

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, 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 or Rolling Stock. Currently, there is no dollar threshold in the FTA regulations, thus "Buy America" provisions apply to all contracts, both operating and capital, regardless of the dollar amount involving Federal funds. However, FTA has established a general waiver for inclusion of this provision in small purchase procurements (defined by Federal Regulations as less than \$100,000), so actual applicability for this clause is for contracts greater than \$100,000.

The "Buy America" requirements state that:

- a. CDTA shall adhere to the "Buy America" clause set forth in its grant contract with the FTA.
- b. CDTA shall include in its bid specification for procurement an appropriate notice of the "Buy America" provisions; such specifications to require, as a condition of responsiveness, that the bidder submit with its bid a completed "Buy America" certificate.
- c. 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 Urban Mass transportation Act of 1964, that (1) the cost of components produced in the United States is more than sixty percent (60%) 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. 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 the 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, the 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 the CDTA should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- B) **Open Contracting Opportunities;** If, however one party seeks access to a public transportation asset, and the 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 the CDTA to use existing contract rights held by another recipient commonly called “piggybacking”:

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

- A) **Consistency with the Underlying Contract.** FTA expects the 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.
- B) **Price.** The 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.
- C) **Awards Treated as Sole Source Procurements.** The following actions constitute Sole Source awards:
 - 1. **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.
 - 2. **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.

Acquisition through Assigned Contract Rights:

Although FTA does not encourage the practice, the 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 preaward 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. Before proceeding with the assignment, however, 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 the 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 a the change. The Procurement Department must receive a requisition for a change order with the proper authorizations, 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 \$100,000- whichever is greater. For contracts valued below \$100,000, the board will approve any cumulative (sum total) set of change orders that pushes a contract's value over \$100,000.

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 contact, 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 4220.1F (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) 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 Vice President of Finance and Administration will insure 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, restrictions on lobbying, 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 its 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.

Section III-Detailed Procurement Guidelines

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

Micro-Purchases: purchases resulting in cost to CDTA under \$3,000

Mini Purchases: purchases resulting in cost to CDTA between \$3,000 and \$14,999 per year, and a subcategory of mini purchases for bus parts.

Large Purchases: purchases resulting in an aggregate cost to CDTA of \$15,000 or more per year

Sealed Bids/Invitation for Bids
Competitive Negotiation/Request for Proposals
Procurement of Architectural and Engineering Services
Non-competitive Negotiation/Sole Source

Preferred Source: Purchases from sources mandated by the State of New York.

Following are the steps that must be performed to correctly acquire goods and services on behalf of CDTA. All documents used in any procurement must be filed in the 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 inside the front cover of the folder. 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 \$15,000. Following is a summary of CDTA micro and small procurement procedures:

Procurement by Micro-Purchase: <\$3,000:

Procurements of goods and/or services costing less than \$3,000 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.

Procurement by Mini Purchase: >\$3,000 and <\$15,000:

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 \$3,000 but do not cost more than \$14,999. NOTE: The Davis-Bacon Act applies to federally funded construction contracts over \$2,000. For mini-purchases, a fair and reasonable price determination is made based on price analysis.

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.

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

The Purchasing 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 Purchasing 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”.

Large Purchases:

Pursuant to New York's Public Authorities Law and Article 4-C of the New York Economic Development Law, all procurements of \$15,000 or more require the selection of contractors on a formal, competitive basis, unless otherwise indicated in these Guidelines, 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 Purchasing 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*.

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

This method of procurement is the preferred method for acquisitions with the annual cost totaling fifteen thousand dollars (\$15,000) 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 Invitation for Bids and 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:

- a. **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 must be used. AIA terms with supplemental conditions may be included.
- b. **Goods and Commodities:** Multiple 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.
- c. **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.
- d. **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.
- e. **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.
- f. **Services and Consultants:** Where selection is based exclusively on price, an IFB for services requires multiple bids/quotes/proposals. Proposals must be in writing. The IFB procedure may only be used for services and Consultants where the award will be exclusively on the basis of price. For professional services, 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 the CDTA will be provided to all prospective bidders in the form of 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 she will sign and

certify. Bids that are received after the scheduled time of bid opening must be returned to the bidders unopened. Observers at the bid opening should be advised to take notes if they want an instant record of the proceedings, and to 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.

- a. 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.
- b. 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.
- c. The low bidder may be allowed to withdraw, provided the bidder can identify and demonstrate an error in the bid.
- d. Award will be made by the Director of Procurement of any Contract valued at less than \$100,000 based upon the lowest responsive bid from a responsible bidder. The Director of Procurement will make award recommendations to the CDTA Board of Directors for those Contracts that require Board approval.
- e. The apparent low bidder will be notified in writing of the intent to award, subject to the bidder's ability to meet the requirements of the IFB including Contract requirements.
- f. 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.
- g. Before the Contractor can begin work, it must comply with the bid requirements by completing, executing and returning the Contract that was included with the IFB.
- h. After the Contract has been formally awarded by the CDTA, signed and returned with all necessary documentation (insurance certificates, performance bond) the Contractor is notified by the Project Manager to submit the signed agreement original(s) together with any commercial requirements. 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.

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 fifteen thousand dollars (\$15,000) 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 Request for Proposals 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 the Authority 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, however, 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 scope of work or specifications.

- a. **Scope of work or specifications and any special terms and conditions:** Preparation of the scope of work or specifications, and any special terms and conditions is the responsibility of the department requesting the procurement working in conjunction with the Director of Procurement.
 - i. **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.
- b. **Required Contract Clauses and Agreement:** Counsel advises as to state and federal requirements governing the procurement and will provide Contract forms and appendices to be used, where appropriate. Counsel will also

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

- c. Information to Proposers and Required Forms:** The Director of Procurement will prepare 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 Addenda. Anyone making contact by or on behalf of a Vendor/Contractor (lobbying or selling) is required to disclose to CDTA. CDTA staff/members are required to make a record of 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 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:

- a. 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.
- b. 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.
- c. 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.
- d. Multiple written proposals are required for Operational Services or the Sole-Source procedures must be justified. State and federal provisions will apply. Contract forms have been posted. Appendix A and Appendix B must be used. Because of the nature of this work, there are stringent insurance requirements.
- e. 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.
- f. 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.

- a. 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 the 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 awarded. Award will be made by the Chief Executive Officer of any Contract valued at less than \$100,000 based upon most superior final proposal from a responsible firm. The Director of Procurement will make award recommendations to the CDTA Board of Directors for those Contracts that require Board approval. The Contract will be based on the form included in the RFP along with all required state and federal provisions. Scope of the work, prices, rates and terms for payment will be described in detail as negotiated by the parties. After the Contract has been formally awarded by the CDTA, signed and returned with all necessary documentation (insurance certificates, performance bond, etc.) the Contractor is notified by the Project Manager to submit the signed agreement original(s) together with any commercial requirements (bonds, insurance certificates). 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.

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

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, the federal funding is not included, and provided that the price quoted by the preferred source does not exceed by more than 15% the prevailing market price as determined by CDTA. In such instances where a Preferred Source for the necessary goods and/or services is known to exist, that source will be given an opportunity to submit a price quote at 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 in within 15% of what is determined to be the prevailing market price.

Additional Procurement Considerations:

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 is does not exceed more than 15% of the prevailing market price that the price will be deemed reasonable and that product will be purchased.

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

Price Splitting: Purchases shall be 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. The CDTA will continue to inform the FTA of the status of any protests. If the CDTA denies a protest it will notify the FTA Regional Administrator. The following information will be provided to the FTA:

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

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 Rulings on Protests 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 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.

Rulings on Protests

Within ten (10) business days after receipt of a pre-bid or post-bid protest, 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 shall form and be retained by the CDTA as the formal record of the dispute resolution process.

The issuance of the foregoing determination is the 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

In the event that CDTA fails to abide by the protest procedures set forth above, and Federal funds are being utilized in connection with the procurement, the protestor may seek a review by the FTA.

The FTA will only consider a protest if the CDTA:

- Does not have protest procedures; or
- Has not complied with its protest procedures; or
- Has not reviewed the protest when presented an opportunity to do so; or

- There is a violation of Federal Law or regulations.

Protests shall be filed with the FTA Regional Administrator for the region administering the project no later than five (5) days after a final decision is rendered under CDTA's protest procedure. In instances where the protestor alleges that the grantee failed to make a final determination on the protest, protestors shall file a protest with FTA no later than five (5) days after the protestor knew or should have known of CDTA's failure to render a final determination on the protest.

Specific FTA filing procedures are set forth in FTA Circular 4220.1F. CDTA shall also provide all further information necessary to file a protest with the FTA.

Appendices:

Appendix 1: Procurement Checklist

Appendix 2: CDTA Prompt Payment Policy

Appendix 3: CDTA Petty Cash Policy

Appendix 4: Disposition of Property Guidelines

Appendix 5: Code of Ethical Conduct

Appendix 6: Contract Administration

Appendix 7: Annual Procurement Report to Board of Directors (Current Year)

Appendix 1: PROCUREMENT CHECKLIST

Contract Name:

Contract Number:

Project Manager:

Awarded To:

Phone #:

Mailing Address:

Fax #:

Contact:

Email:

	Advertising		Required Forms-Rolling Stock Only Cont.
	Copy of IFB/RFP		Post-Delivery Buy America Certification
	Bid/Proposer List		Post-Delivery Purchaser's Requirement
	Addendums		On-Site Inspector's Report
	Executed Agreement		FMVSS Pre-Award & Post Delivery
	Insurance Certificate		Grant Manager Review (Initial)
	Proof of Workers Compensation Insurance		Required Forms-All Procurements
	Notice to Proceed		Lobbying Certification
	Copy of Purchase Order		Disclosure of Contacts
	Print Screen from Excluded Parties Website*		Certificate of Non-Discrimination in Ireland
	DBE Certification (If Applicable)		Non-Responsibility Disclosure
	Performance Bond (Const. Over \$100K)		Non-Collusion Certificate
	ST-220-CA Contractor Certification to Covered Agency (Send to Sr. Financial Analyst)		Standard Form LLL and Quarterly Updates (Only needed when over \$100K and contractor engages in Lobbying Activities)
			Certificate of Compliance
	Board of Directors		Buy America Certifications (Buses, Shelters, Lifts)
	Action Item		Other Required Documents
	Contract Award Certification		Contract Administrations System in Place
	Signed Resolution		Record of Procurement History
	Required Forms-Rolling Stock Only		Protest Procedures
	Bus Testing & Certification Report		Selection Procedures
	TVM Certifications		Cost/Price Analysis & ICE (Independent Cost Estimate)
	Pre-Award Audit		Justification for Non Competitive Award (if Applicable)
	Pre-Award Buy America Certification		No Excessive Bond Requirements
	Pre-Award Purchaser's Requirement		Specs were not exclusionary
	Post-Delivery Audit		No Geographic Preference (Except for A&E)
			Evaluation of Options (If Applicable)

Appendix 2: PROMPT PAYMENT POLICY

CAPITAL DISTRICT TRANSPORTATION AUTHORITY

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 subdivisions 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 and Supplies:** Includes, but not limited to buses, supervisory & maintenance vehicles, all other staff support vehicles, bus & vehicle parts, repairs to all vehicles, diesel fuel & gas, oil & lubricants, antifreeze, all related freight charges, and other vehicle related items.
- b) **Operating/Office Equipment and 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, typewriters, adding machines, telephone systems, treasury sorting & counting equipment and maintenance, safety & training related equipment and supplies, bus wash equipment and supplies, zone checks, bus transfers & schedules, repairs to all operating and office equipment, all related freight charges, and all shop & office supplies.
- c) **Rental and Lease Agreements:** Includes, but not limited to, tire service & lease arrangements, copy & mailing equipment rental, office space, tools & equipment, vehicle rentals, uniforms, all other rental and lease agreements.

- d) Professional and General Services: Includes, but not limited to, public relations services, accounting & audit fees, legal & banking services, bond counsel fees, armored car service, employee assistance services, insurance fees, architect and design services, consultant fees for special studies, security & alarm services, waste disposal services, all general freight charges and all other professional & general services.
- e) Utilities: Includes, but not limited to, gas & electric charges, water & sewer charges, telephone charges.
- f) Construction Projects: Includes, but not limited to, building construction and renovation projects, parking lot & garage facilities, storage facilities, bus shelters, informational & directional signs, fencing, storage tank facilities, all repairs relating to building & ground facilities, all related freight charges and all other construction & renovation projects including related supplies.

3. Procedures for Requesting Payment Under Contracts

- a) For all categories of contracts listed in section two of this policy, contractors must submit a “proper invoice” as required, to the following designated payment office in order to initiate any payment:

Capital District Transportation Authority
 110 Watervliet Avenue
 Albany, New York 12206
 Attn: Finance Department – Accounts Payable

- 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.
- c) For all categories of contracts listed in section two 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 receives 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 ninety-six (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 of 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 judgment 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 in order 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 two, 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 two, 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 two, subparagraphs a), b), c), d), e) and f) 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 purchasing 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 two, subparagraphs a), b), c), d), e) and f) of this policy.
- e) Contractor invoices submitted for payment covering contracts with retainage provisions will be processed according to contract provisions or in accordance with section three, 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 two, subparagraphs a), b), d) and f) of this policy.
- f) Contractor invoices submitted for payment covering changes in work scope and/or additional goods & property delivered or services rendered from original contract and not 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 two, subparagraphs a), b), c), d), e), and f) of this policy.
- g) The date by which CDTA must make contract payment is modified in accordance with the provisions of section five, below. All categories of contracts listed under section two 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) through 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 three, 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 in order for CDTA not to become liable for interest payments shall be calculated from the date of receipt of an 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 into 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 State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.
- 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: Petty Cash Procedures

\$50.00 or under: Several Petty Cash funds are maintained by the CDTA, and are used to procure small items and services that cost \$50.00 or under. The individual funds and their transaction limits are as follows:

<u>LOCATION</u>	<u>FUND VALUE</u>	<u>TRANSACTION LIMIT</u>
Albany	\$500.00	\$50.00
Troy	\$200.00	\$50.00
Schenectady	\$200.00	\$50.00
Sales Unit	\$200.00	\$50.00

- a. Albany: A request for items or services costing \$50.00 or under is made to an individual department head, or an individual's immediate supervisor. Upon review and concurrence of the request, the petty cash form is completed including authorized signatures. If a petty cash advance is to be given, the white copy of the form presented to the Treasury Supervisor/Assistant, who will issue funds for the amount specified on the form with an expectation that a valid receipt will be provided after the funds are expended. If reimbursement is to be made, the completed form and receipt are presented to the Treasury Supervisor/Assistant who will issue the funds. In all cases, the person receiving funds must sign the petty cash form as the receiver of petty cash. Upon completion of the transaction, all petty cash forms, receipts and change are returned to the Treasury Supervisor/ Assistant.
- b. Facilities/RRS, Troy and Schenectady: The petty cash fund is held by the Superintendent or his/her assistant who fills out the forms and approves the request for items or services costing \$50.00 or under. The completed form and receipt must be presented for reimbursement. Upon completion of the transaction, all petty cash forms, receipts and change are returned to the Superintendent-who is responsible for reconciling the Petty Cash fund.
- c. All Petty Cash fund accounts are will be forwarded to the Finance Department for review and approved by the Deputy Comptroller or the Senior Deputy Comptroller or Director of Finance for replenishment.
- d. As replenishments are made, the Senior Deputy Comptroller (or designee) will charge the various expenses to the proper accounts such as travel, Roadeo, awards, supplies, bus parts and so on.

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

Audits of the Petty Cash fund are the responsibility of the Deputy Comptroller or his/her designee. Each Petty Cash fund will be audited semi-annually. Overages or shortages discovered during an audit of the fund or when requesting replenishment of the fund by the custodian will be documented and investigated by the Deputy

Comptroller. Overages shall be returned to the Finance Department while shortages will be discussed with the Petty Cash fund custodian and his/her immediate supervisor. When a Petty Cash box custodian is going to be on an extended absence, such as vacation, the Petty Cash box shall be counted prior to transferring to designee. A copy of this procedure will be provided to the designated custodian and reviewed with that person by the custodian so that the designee has a clear understanding of the funds held in the box and the responsibilities associated with maintaining it. If the extended absence is unexpected, such as illness, the Deputy Comptroller will assume this responsibility. Upon the return of the custodian, the Petty Cash box will be reviewed again.

Appendix 4: DISPOSITION OF PROPERTY GUIDELINES

CAPITAL DISTRICT TRANSPORTATION AUTHORITY ADOPTED PURSUANT TO SECTION 2896 OF THE PUBLIC AUTHORITIES LAW

1. DEFINITIONS

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

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

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

2. DUTIES

A. The Authority shall:

- (i) maintain adequate inventory controls and accountability systems for all property owned by the Authority and under its control;
- (ii) periodically inventory such property to determine which property shall be disposed of;
- (iii) produce a written report of such property in accordance with subsection B herewith; and
- (iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.

B. The Authority shall

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

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

3. TRANSFER OR DISPOSITION OF PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. such action is otherwise authorized by law.

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

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

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

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

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

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

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

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

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

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

Appendix 5: CODE OF ETHICAL CONDUCT

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

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

Code of Ethics:

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

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

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

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

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

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

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

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

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

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

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

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

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

n. Members must not accept gifts of more than nominal value or travel expense reimbursements from a disqualified source.

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

DEFINITIONS:

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

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

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

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

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

AMENDMENTS:

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

2. ETHICS RULES FOR CDTA EMPLOYEES

This Code of Ethics is based upon the Public Officers Law and the Procurement Lobbying Law and shall apply to all employees of the Capital District Transportation Authority and its subsidiaries (“CDTA”), 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.

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 the CDTA.
- n. Employees must report all contacts concerning CDTA procurements to the Ethics Officer.

- o. Employees must report potentially unethical behavior by any employee of the CDTA to the Ethics Officer. Employees may file ethics complaints anonymously and are protected from retaliation by the policies adopted by the CDTA.
- p. Certain employees must not engage in certain political activities.

DEFINITIONS:

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

PROCEDURES:

1. All outside employment or any other activity that may create a conflict of interest must be approved by the 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 the CDTA must be approved by the Ethics Officer prior to acceptance.

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

REQUIRED REPORTING:

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

VIOLATIONS:

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

3. PROCUREMENT CODE OF ETHICS

CDTA Procurement Code of Ethics:

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

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

Vendor Code of Ethics:

1. Each procurement solicitation issued by the CDTA will identify the CDTA's single point of contact for that solicitation. Neither the vendor nor any person or entity acting on behalf of the vendor may contact any person other than the single point of contact for the purposes of influencing such procurement.

2. The vendor shall direct every individual or entity retained, employed, designated by or acting for or on behalf of the vendor to attempt to influence the procurement process with the CDTA, to limit their contacts to the designated single point of contact.
3. The vendor will calculate the price(s) contained in any bid or proposal independently, without collusion, consultation, communication, or agreement with any other competing vendor for the purpose of restricting competition.
4. Unless otherwise required by law, the price(s) which the vendor quotes in its bid or proposal will not knowingly be disclosed by the vendor, directly or indirectly, to any other competing vendor prior to the closing date for bids or proposals.
5. The vendor will not make any attempt to induce any other individual or entity to submit or not to submit a bid or proposal.
6. The vendor will not employ or retain any individual or entity for the purpose of soliciting or securing a CDTA Contract upon any agreement or understanding for a commission, percentage, brokerage, or fee that is contingent or dependent upon the outcome of the procurement.

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.¹ CDTA seeks to ensure that the proper allocation and management of public funds is assured in part by implementing a contract administration framework.

Roles

Director of Procurement – Reporting to the Vice President of Finance and Administration, 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.

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.

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.

¹ “Best Practices in Contract Management: Strategies for Optimizing Business Relationships”. Aberdeen Group.

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.

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.

Modifying of 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 4220.1F 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.

Terminating a Contract

The Project Manager is primarily responsible for making a recommendation to terminate a contract (e.g. termination for convenience 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.

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 overrun or under-run of the estimated cost under 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 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.

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 time and or increases to or decreases from 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., city council, board of directors, executive director) 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

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 PM 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 PM 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)



Memorandum

January 6, 2016

To: Members, Performance Oversight Committee
From: Stacy Sansky, Director of Procurement
Copy: Mike Collins, Vice President of Finance & Administration
Re: Calendar Year 2015 Procurement Report Summary

At last April's Performance Oversight Meeting, we discussed a number of contractual areas outlined in the procurement manual. As a result, it was decided that the committee would receive an annual report to review the procurement process: surplus items, change orders, sole source contracts and our Minority/Women Business Enterprise (MWBE) program.

Change Orders

A change order is work that is added to or deleted from the original scope of a contract, which alters the original contract amount and/or completion date. Change orders that exceed 20% of the original contract value or \$100,000 (whichever is greater) require Board approval.

There were only three change orders that fell under the Board approval threshold for the past year. The change orders were 13%, 14% and 19% of the original contract value for a total dollar amount of \$32,600. Each change order was reviewed with the project manager; they were all deemed to be fair and reasonable in justification and price.

Sole Source Contracts

Sole source contracts are used when no competition is available or when there is an emergency procurement. All sole source contracts valued at \$25,000 or more require Board approval. Sole source agreements are closely monitored and minimized whenever possible. During 2015 there were no sole source agreements executed under the approval threshold. Please note that we had a number of single source contract awards and each one was noted as such in the award resolution.

Minority/Women's Business Enterprise (MWBE)

The Minority/Women's Business Enterprise (MWBE) program is a state required initiative intended to level the playing field for qualified minority/women owned businesses in the state.

We continue to improve MWBE participation in CDTA purchases to meet the state mandated 30% goal. The MWBE participation for CDTA was 22%. While this amount is short of the state goal, it is better than previous years (CY14 18%, CY13 14% & CY12 11%).

We have contracts with MWBE firms to provide staffing services, operator uniforms, non-revenue vehicles and copy services, to name a few. In order to find new ways to reach the MWBE audience, we are partnering with local chambers of commerce. Just recently, we began providing an overview of CDTA's MWBE program to classes of new entrepreneurs at The Albany-Colonie Chamber.

The Governor has announced that counties and municipalities will be required to meet a 30% MWBE participation. This additional participation requirement may make it easier for qualified firms to become certified in the MWBE program (providing a larger pool of firms to work with).

Surplus Sale

Please see corresponding agenda action item along with listing of items disposed of in CY15 that requires Board Action.