



CHARLESTON AREA REGIONAL TRANSPORTATION AUTHORITY

CARTA BOARD MEETING

August 16, 2017

1:00 PM

Lonnie Hamilton III Public Service Building
4045 Bridgeview Drive, Room B-225
North Charleston, SC 29405

AGENDA

1. Call to Order
2. Consideration of Board Minutes –July 19, 2017 Meeting
3. James Island Shelter Project (Camp & Folly Roads) – Mayor Bill Woolsey
4. Financial Status Report – Ron Mitchum
5. Contractor Oversight Policy – Request for Approval – Ron Mitchum
6. Policy to Promote Safe and Efficient Transit – Request for Approval – Amy Jenkins
7. Tel-A-Ride Paratransit Service Riders Guide Amendment – Request for Approval – Andrea Kozloski
8. Procurement Policies & Procedures Revision – Request for Approval – Ron Mitchum
9. Marketing/Outreach Report - Daniel Brock
10. Executive Director's Report
11. Other Business, If Any
12. Public Comments, If Any
13. Board Comments, If Any
14. Adjournment

Please note that the next **regularly scheduled** meeting of the CARTA Board will be WEDNESDAY, September 20, 2017 in Room B-225 of the Lonnie Hamilton III Public Service Building, 4045 Bridgeview Drive, North Charleston, SC 29405. Notice, including agenda documentation, will be sent to Board Members in advance of the meeting, as well as posted on www.ridecarta.com.

CHARLESTON AREA REGIONAL TRANSPORTATION AUTHORITY
BOARD OF DIRECTORS MEETING
July 19, 2017

The Charleston Area Regional Transportation Authority (CARTA) Board of Directors met on Wednesday, July 19, 2017, at the Lonnie Hamilton III Public Service Building located at 4045 Bridgeview Drive, Room B-225 in North Charleston, South Carolina.

MEMBERSHIP: Ed Astle; Mary Beth Berry; Marty Bettelli; Michael Brown; Alfred Harrison; James Lewis; Brad Morrison; Minnie Newman; Pat O'Neil; Linda Page; Vic Rawl; Dickie Schweers; Michael Seekings; Elliott Summey; Keith Summey; John Tecklenburg; Craig Weaver

MEMBERSHIP PRESENT: Ed Astle; Mary Beth Berry; Marty Bettelli; Michael Brown; Alfred Harrison; James Lewis; Pat O'Neil; Michael Seekings

PROXIES: Keith Benjamin for John Tecklenburg; Warwick Jones for Dickie Schweers; Jerry Lahm for Elliott Summey; Ray Anderson for Keith Summey; Steve Thigpen for Vic Rawl

STAFF PRESENT: Ron Mitchum; Andrea Kozloski; Robin Mitchum; Michelle Emerson; Sharon Hollis; Kim Coleman; Nick Stefan

OTHERS PRESENT: Amy Jenkins (MGC); Alisha Wigfall (Transdev); Gloria Fulton (Transdev); Jim Frierson (SCDOT); Brittany Huskey (Leath, Bouch & Seekings); William Hamilton (public); Dave Crossley (public)

1. Call to Order

Chairman Seekings called the CARTA Board of Directors Meeting to order at 1:05 p.m. followed by a moment of silence.

2. Consideration of Board Minutes – June 21, 2017 Meeting

Mr. Bettelli made a motion to approve the June 21, 2017 Meeting Notes as presented and Mr. Astle seconded the motion. The motion was unanimously approved.

3. Financial Status Report – Robin Mitchum

Robin Mitchum, Deputy Director of Finance and Administration, presented the financial status report for the period ending June 30, 2017. Ms. Mitchum noted that the excess of revenues over expenditures totals \$907,104. She delivered an overview of the activities for FY17:

- The budget to actual revenues for the month was below projections:
 - § The pass sale revenue fell short of projections: Roper Hospital returned \$42,075 in monthly passes they previously purchased. Mr. Jones made an inquiry regarding Roper's return of passes to which Ms. Mitchum explained that the bus passes were pre-paid and no longer needed since Roper discontinued a program.
 - § The actual federal revenue includes operating and capital for the year-to-date.
 - § The Charleston County EOC revenue is for services provided for Hurricane Matthew evacuations.
 - § Insurance proceeds are a result of accidents.
 - § Sales of Assets reflect the proceeds of the sale of five Cutaway buses and two 40-foot express buses on GovDeals. This line items also includes the scrap bus sold to Transdev for \$3,601. We are in the process of selling additional assets which will be reflected in future months.
 - § Miscellaneous Revenue is payment for a production company's use of an old bus to be used on the set of a movie.

- The budget to actual expenditures for the month was mostly on target with projections with the exception of the following items:
 - § Office Equipment Maintenance (OEM) is annual renewals. This includes the maintenance renewal of Trapeze route software for para-transit service.
 - § Contract Services (IGA & Management) is the extensive services provided to CARTA.
 - § Vehicle Maintenance is the cost to maintain the fleet. We have had to purchase several engines to keep our aging fleet in service.
 - § Insurance includes the cost of liability insurance provided by the Insurance Reserve Fund. The amount reflected is the bulk once a year renewal invoice. While we receive premium adjustments throughout the year as we add and remove assets, this amount reflects the bulk of the expenditure for the year.
 - § Fareboxes exceeded the budget. The total amount of the new farebox system will be \$1,195,921, including the farebox system, installation and training. This system was purchased with \$800,000 of Federal Pass Through funds from the BCDCOG's federal planning guide share money.

It is expected that these items will come back into line since some of these expenses do not occur consistently each month. The Board received the financial status report as information.

4. Purchase of Modular Building – Request for Approval

Ron Mitchum, Executive Director, noted that CARTA is requesting approval to purchase a 20'Wx12'Dx8'H precast concrete building from Smith-Columbia to replace the existing structure and house the farebox vault and month counting operations. Smith-Columbia is a certified General Services Administration supplier. The cost of \$30,977.00 includes the building, installation of AC/Heat HVAC system, exterior security flood lighting, conduit holes for four security cameras, electrical lighting and electrical service, alarm system installed on the door and lighted exit sign. Mr. Jones made an inquiry regarding the cost including demolition of the existing building. Mr. Mitchum explained that the cost does not include demolition; procurement steps will be taken to obtain a company/contractor to handle the demolition of the existing building.

Mr. Astle made a motion to approve the Purchase of Modular Building request as presented and Mr. Bettelli seconded the motion. The motion was unanimously approved.

Chairman Seekings requested a motion be made to receive agenda item numbers 5 and 6 concurrently. Mr. Astle made a motion to receive and act upon the agenda items concurrently and Mr. Bettelli seconded the motion. The motion was unanimously approved.

5. Submission of Grant Application for Bus and Bus Facility Funding – Request for Approval

Mr. Mitchum noted that the FTA announced the availability of approximately \$226.5 million of FY17 funds for buses, bus facilities and bus equipment. The Bus and Bus Infrastructure Program provides funds to designated recipients that allocate funds to fixed route bus operators, and to states and local governmental authorities that operate fixed route bus service. Applicants are required to submit a proposal by 11:50 p.m., Eastern Time on August 25, 2017.

6. Submission of Grant Application for VW Settlement Funds for Bus Replacement – Request for Approval

Mr. Mitchum noted that as a result of VW's violation of the Clean Air Act, an Environmental Mitigation Trust was established as part of the settlement to fund eligible mitigation actions. The goal is to offset the environmental damage caused by the use of VW defeat services with NOx emissions reductions from cleaner diesel engines or alternatively fueled engines. The initial share to South Carolina from the Environmental Mitigation Trust is approximately \$31.6 million. CARTA is looking to take the next step in its

pursuit to provide transit service in a more efficient and environmentally sustainable way by purchasing 10 battery-electric vehicles for its fleet, reducing tons of NOx emissions annually. CARTA will serve as the grant subrecipient and will coordinate with the BCDCOG to complete the grant as stated in the proposal. Ms. Berry made an inquiry regarding the overall savings to which Mr. Mitchum explained that due to the savings in maintenance and the buses requiring fewer mechanical parts, it will be less expensive to maintain the battery-electric vehicles in the long run. Mr. Jones made an inquiry regarding the life-span of the battery-electric vehicles to which Mr. Mitchum explained that the life span is getting longer for these types of vehicles. Mr. Benjamin commented that Mayor Tecklenburg has submitted a Letter of Support for the grant application.

Mr. Anderson made a motion to approve the Submission of Grant Application for Bus and Bus Facility Funding and the Submission of Grant Application for VW Settlement Funds for Bus Replacement as presented. Mr. Astle seconded the motion. The motion was unanimously approved.

7. New Flyer Contract Amendment – Request for Approval

Mr. Mitchum noted that CARTA is requesting approval to amend the New Flyer of America Inc., 30' Urban Transit Coaches for an additional year pursuant to the renewal terms outlined in the contract. The contract was awarded on July 1, 2016, to purchase seven coaches with a five-year option to purchase up to an additional seven coaches within the same specifications. Amendment 1 will be effective for the period commencing July 1, 2017 and ending on June 30, 2018.

Mr. Astle made a motion to approve the New Flyer Contract Amendment as presented and Mr. Bettelli seconded the motion. The motion was unanimously approved.

8. North Charleston Park-N-Ride Loan Authorization Requirements – Request for Approval

Robin Mitchum, Deputy Director of Finance and Administration, explained that the Melnick property title came back clear, the survey should be completed by Monday, July 24, 2017, and the environmental assessment should be completed by the end of July. Ms. Mitchum explained that she needed approval to prepare a commitment letter to BB&T for the loan. Ms. Mitchum also requested approval to authorize Mr. Mitchum to provide any other documents requested by BB&T. Ms. Mitchum stated that the closing is expected to occur by August 18, 2017, as stated in the June 21, 2017 commitment letter from BB&T.

Mr. Astle made a motion to approve acceptance of that commitment letter including specifically the designation of the borrowing as a qualified tax-exempt financing under the Internal Revenue Code and authorizing Executive Director Mitchum to take any further action and to execute and deliver any closing documents as may be necessary and proper to effect the closing of the financing in accordance with the terms and conditions set forth in the commitment letter, his execution to be conclusive evidence of such approval. Mr. Jones seconded the motion. The motion was unanimously approved.

9. Project Status Report:

A) Intermodal Facility Project

Sharon Hollis, Principal Planner, delivered an update on the Intermodal Facility. Ms. Hollis gave an overview of completed and planned activities. She noted that the construction contract is scheduled to go to the City of North Charleston's Finance Committee for approval on July 20, 2017. A new milestone schedule will be developed once the construction contract is finalized. The Ground-Breaking Ceremony is scheduled for August 24th at 10:00 a.m. Notification will be sent to Board Members. Mr. Mitchum encouraged Board attendance at the Ground-Breaking Ceremony. The Board received the Intermodal Facility project update as information.

B) North Charleston Park-N-Ride

Andrea Kozloski, Deputy Director of Operations and Support, updated the Board on the North Charleston Park-N-Ride facility. Ms. Kozloski noted that the transition of relocating riders' vehicles to

the adjacent lot went very smoothly. She commended Michelle Emerson and staff for their work by informing riders of the change and being available to assist day and night.

C) Regional Park-N-Ride Study

Ms. Hollis noted that the RFQ is out to select a consultant to develop a regional Park-N-Ride study that will identify suitable sites for Park-N-Ride locations throughout the region. The study will address the existing need for Park-N-Ride facilities which are currently at risk and will address future needs for Park-N-Ride facilities along commuter corridors – related to bus corridors for CARTA and TriCounty Link, BRT and Travel Demand Management, etc. It will identify locations in rural and suburban areas. The plan will also identify excess DOT sites or public owned land and will develop design criteria and concepts to prepare cost estimates that may be used to prioritize sites, identify funding and develop a capital program to invest in Park-N-Ride locations over the short and long term. A firm will be selected in August and the study should kick-off in the fall. The study is anticipated to last six to eight months. Mr. Jones inquired if BRT funds included Park-N-Rides; Ms. Hollis responded that three are included. Mr. Mitchum noted that staff has met with the new owners of Citadel Mall and they are supporters of transit and have expressed interest in continuing the Park-N-Ride location at Citadel Mall as well as making improvements to the facilities.

D) Farebox Management System Implementation

Ms. Kozloski noted that the farebox system is ready to be installed; however, installation is on hold until the modular building is in place. Staff will conduct outreach to the public to explain the new system.

E) Swiftly App Implementation

Ms. Kozloski noted that the Swiftly App will be fully implemented by the end of August.

The Board received the project status report as information.

10. Marketing/Outreach Report

Chairman Seekings updated the Board on Mr. Brock's progress with his health issues and asked that Mr. Brock's continued improvement remains in the prayers of Board members and guests at today's meeting. In Mr. Brock's absence, Mr. Mitchum updated the Board on Marketing and Outreach efforts noting that the new website will launch in August and work continues on the integration of all the websites under one umbrella. Mr. Jones requested that the Wikipedia site be included in the integration to which Mr. Mitchum replied it would be included. The Board received the marketing/outreach report as information.

11. Executive Director's Report

Mr. Mitchum highlighted the following matters:

- David Bonner has been named the new General Manager of Transdev.
- The new Maintenance Manager will relocate back to Charleston from Comet in Columbia. He was previously the Assistant Maintenance Manager here in Charleston for several years.
- Operational plans are in place for the August 21st Eclipse.
- Budget presentations are in progress for City and County Councils' approval.
- Work continues on short term Park-N-Ride solutions for hospitality industry employees.
- Applications have been submitted for the low/no emissions program.
- Applications have been submitted for the DERA funding program for bus replacement.
- Approximately 30 benches are being delivered next week.
- Upcoming procurements include:
 - § Commuter buses (17-18) to replace the 1994 Flexibles
 - § Ashley Phosphate/Dorchester Roads shelters

§ Low floor neighborhood buses (2)

§ Leeds Avenue facility repairs

The Board received the Executive Director's report as information.

12. Other Business, If Any

There was no other business discussed.

13. Public Comments, If Any

There were two public comments:

- David Crossley, Best Friends of Lowcountry Transit, expressed his concern with Route 32/Sam Rittenburg Boulevard. Mr. Crossley believes there should be more frequent stops on the route since it is a main thoroughfare for the SuperStop and Citadel Mall.
- William Hamilton, local attorney and Executive Director of Best Friends of Lowcountry Transit, distributed materials regarding Best Friends of Lowcountry Transit and upcoming events and commented on the material.

14. Board Comments, If Any

- Mr. Astle commended Andrea Kozloski on a job well done with the process of having the Wi-Fi system installed on the buses.
- Mr. Jones requested to meet with Mr. Hamilton to better explain CARTA Board's objectives and roles.
- Mr. Jones referred to CARTA's Bylaws, Article 5 and inquired about Board Committees. Chairman Seekings explained that it is his responsibility to appoint committee members as deemed necessary.
- Ms. Berry commented that she is happy to see CARTA being stewards of the environment.

15. Adjourn

There being no further business before the Board, Chairman Seekings adjourned the meeting at 1:50 p.m.

Respectfully submitted,
Kim Coleman



CHARLESTON AREA REGIONAL TRANSPORTATION AUTHORITY

MEMORANDUM

TO: Board of Directors

FROM: Robin W. Mitchum, Deputy Director of Finance & Administration

SUBJECT: July 31, 2017 Financial Report Overview

DATE: August 9, 2017

Please find attached the July 31, 2017 Financial Report. Below is a brief overview of the activities for FY17.

Revenues

The budget to actual revenues for the month was below our projections.

- The pass sale revenue fell short of projections. In June, Roper Hospital returned \$42,075 of monthly passes they previously purchased. Roper discontinued a program.
- The actual federal revenue includes operating and capital for the year to date.
- The Charleston County EOC revenue is for services provided for Hurricane Matthew evacuations.
- Insurance proceeds are a result of accidents.
- Sale of Assets reflects the proceeds of the sale of twelve cut-a-way buses, two 40-foot express buses, seven trolleys, and two cars on GovDeals. This line item also includes the scrap bus sold to TransDev for \$3,601. We are in the process of selling additional assets which will be reflected in future months.
- Miscellaneous Revenue is payment for a production company's use of an old bus to be used on the set of a movie (\$1,200), and miscellaneous scrap metal sold (\$76.50).

Expenditures

The budget to actual expenditures for the month was mostly on target with our projections with the exception of a few items.

- Marketing includes a contract with the marketing firm, Rawle Murdy, to update the website in addition to costs associated with promoting the transit system.
- Office Equipment Maintenance (OEM) contains annual renewals. This line item includes the maintenance renewal of Trapeze route software for para-transit service.
- Contract Services (IGA & Management) is the extensive services provided to CARTA.
- Vehicle Maintenance is the cost to maintain the fleet. We have had to purchase several engines to keep our aging fleet in service. Additionally, we have purchased maintenance supplies for maintenance on the new fareboxes.
- Operating Fees & Licenses include credit card transaction fees, DMV fees, storm water fees, and underground storage tank fees.
- Insurance includes the cost of liability insurance provided by the Insurance Reserve Fund. The amount reflected is the bulk once a year renewal invoice. While we will receive premium adjustments throughout the year as we add and remove assets, this amount reflects the bulk of the expenditure for the year.
- Fareboxes exceeded the budget. The total amount of the new farebox system will be \$1,195,921, including the farebox system, installation and training. This system was purchased with \$800,000 of federal pass through funds from the BCDCOG's federal planning guide share money.

We expect these items to come back into line since some of these expenses do not occur consistently every month. **Overall, the agency ended the month with an excess of revenue of \$2,286,153.**

If you have any questions, please contact me at 843-529-0400 ext. 213 or robinm@bcdcog.com.

Amount owed to Transdev as of 7/31/17 is \$1,175,729.76

CARTA
Statement of Revenues & Expenditures
For the Month Ending July 31, 2017

Time elapsed:
83%

	<u>FY17 Budget</u>	<u>Revision #1 FY17 Budget</u>	<u>Actual</u>	<u>% of Budget</u>
<u>Revenues</u>				
Farebox	2,696,890	2,370,254	1,956,213	83%
Passes	585,388	585,388	418,880	72%
COC Shuttle	452,580	452,580	381,588	84%
MUSC	807,000	807,000	661,891	82%
City of Charleston - DASH	516,600	516,600	418,200	81%
City of North Charleston	1,151,630	552,623	-	0%
Federal	18,279,154	15,401,154	8,044,071	52%
State Mass Transit Funds	661,636	617,440	617,440	100%
Sales Tax - Charleston County	8,147,000	8,147,000	7,069,083	87%
Charleston County EOC	-	47,316	47,316	100%
Charleston County Intermodal	1,241,870	1,021,377	-	0%
Advertising	825,000	896,000	680,252	76%
Interest	300	124	103	83%
Insurance Proceeds	-	75,000	84,160	112%
Sale of Assets	-	50,000	82,400	165%
Miscellaneous	-	150	1,277	851%
TOTAL REVENUES	<u>35,365,048</u>	<u>31,540,006</u>	<u>20,462,874</u>	65%
<u>Expenditures</u>				
Staff Salaries	147,327	147,327	123,749	84%
Supplies	15,000	15,000	12,968	86%
Printing	100,000	60,000	37,589	63%
Marketing	70,000	70,000	74,821	107%
Automotive	2,880	2,880	1,967	68%
Accounting (Auditing)	20,000	21,250	21,250	100%
Postage	2,500	2,500	2,313	93%
Dues/Publications	1,100	1,100	500	45%
Training/Travel	2,000	-	-	N/A
Office Equipment Rental	17,496	34,374	34,355	100%
Office Equipment Maintenance	18,000	35,174	36,504	104%
Rent	11,963	21,110	16,817	80%
Communications	105,500	108,167	44,494	41%
Utilities	10,500	10,500	8,094	77%
Advertising	5,500	23,088	12,478	54%
Public Notices	3,500	-	-	N/A
Money Counting	6,000	6,000	4,978	83%
Professional Services	36,000	21,520	11,520	54%
Contract Services	850,000	1,434,511	1,264,559	88%
Paratransit Certification	31,000	-	-	N/A
Vehicle Maintenance	376,000	186,372	194,968	105%
Operating Fees & Licenses	17,000	28,706	25,496	89%
Insurance	538,147	561,000	512,596	91%
Fuel	1,300,000	1,105,340	936,380	85%
Fixed Route	12,084,000	12,084,000	9,465,014	78%
Paratransit	2,282,343	2,282,343	1,863,393	82%

CARTA
Statement of Revenues & Expenditures
For the Month Ending July 31, 2017

Time elapsed:
83%

	<u>FY17 Budget</u>	<u>Revision #1 FY17 Budget</u>	<u>Actual</u>	<u>% of Budget</u>
Miscellaneous	12,500	38,256	22,267	58%
Intermodal Infrastructure - Construction	11,467,500	7,870,000	721,237	9%
Rolling Stock	1,866,627	1,866,627	782,060	42%
Support Vehicles	250,661	250,661	161,632	64%
Bus Shelter Construction/Bench Install	668,864	668,864	59,813	9%
Security/Cameras	344,084	344,084	234,393	68%
Fareboxes	1,000,000	1,000,000	1,067,894	107%
Signage	70,015	70,015	33,544	48%
Automated Vehicle Locator	919,237	919,237	347,794	38%
Capital (IT, Facility Repairs/Maint)	250,000	250,000	39,284	16%
Engineering	50,000	-	-	N/A
Leeds Ave. (FTA Payback)	411,804	-	-	N/A
TOTAL EXPENDITURES	<u>35,365,048</u>	<u>31,540,006</u>	<u>18,176,721</u>	58%
 Excess (Deficit) of Revenues Over (Under) Expenditures	 <u>-</u>	 <u>-</u>	 <u>2,286,153</u>	

CARTA
Statement of Revenues & Expenditures
For the Month Ending July 31, 2017

	Administration	Operating	Capital	TOTAL
EXPENDITURES:				
Salaries & Benefits	58,764	64,985		123,749
Total Direct Personnel	58,764	64,985	-	123,749
Supplies	7,429	5,539		12,968
Printing	49	37,540		37,589
Marketing	74,821			74,821
Automotive	1,967			1,967
Accounting (Outside Services & Auditing)	21,250			21,250
Postage	2,240	73		2,313
Dues/Publications	500	-		500
Training/Travel	-	-		-
Office Equipment Rental	34,355			34,355
Office Equipment Maintenance	21,619	14,885		36,504
Rent	5,567	11,250		16,817
Telephone/Communications	4,406	40,088		44,494
Utilities		8,094		8,094
Advertising	2,463	10,015		12,478
Public Notices	-	-		-
Money Counting		4,978		4,978
Other Professional Services	9,320	2,200		11,520
Contract Services		1,264,345	214	1,264,559
Paratransit Certification				-
Low Income Fare Determination		-		-
Bus Shelter Cleaning		-		-
Consultant Fees - Vehicles				-
Vehicle Maintenance		194,968		194,968
Operating Fees & Licenses	3,333	22,163		25,496
Insurance	9,732	502,864		512,596
Fuel		936,380		936,380
Fixed Route		9,465,014		9,465,014
Paratransit		1,863,393		1,863,393
Miscellaneous	22,267			22,267
Intermodal Infrastructure - Construction			721,237	721,237
Rolling Stock			782,060	782,060
Support Vehicles			161,632	161,632
Bus Shelter Construction/Bench Install		26,000	33,813	59,813
Security Cameras		10,573	223,820	234,393
Fareboxes			1,067,894	1,067,894
Signage		33,544	-	33,544
Automated Vehicle Locator			347,794	347,794
Capital (IT, Facility Repairs/Maint)		39,284		39,284
Engineering		-		-
Leeds Ave. (FTA Payback)				-
TOTAL EXPENDITURES	280,082	14,558,175	3,338,464	18,176,721

CARTA
Statement of Revenues & Expenditures
For the Month Ending July 31, 2017

	Administration	Operating	Capital	TOTAL
REVENUE				
Farebox		1,956,213		1,956,213
Passes		418,880		418,880
COC Shuttle		381,588		381,588
MUSC		661,891		661,891
City of Charleston - DASH		418,200		418,200
City of North Charleston				-
Federal		5,568,905		5,568,905
Federal SC-90-X307			60,222	60,222
Federal SC-04-0010			576,990	576,990
Federal SC-90-X259	1,893			1,893
Federal SC-90-X287		1,801	57,006	58,807
Federal SC-16-X010		43,519		43,519
Federal SC-16-X013		49,815		49,815
Federal SC-90-X246			59,925	59,925
Federal SC-90-X264			129,306	129,306
Federal SC-90-X279			37,085	37,085
Federal SC-2016-001-00			8,497	8,497
Federal SC-2016-016-00			649,107	649,107
Federal PL Guideshare			800,000	800,000
State Mass Transit Funds		617,440		617,440
Sales Tax - Charleston County	2,564,239	3,544,518	960,326	7,069,083
Charleston County Intermodal				-
Charleston County EOC		47,316		47,316
Advertising		680,252		680,252
Interest	103			103
Insurance Proceeds		84,160		84,160
Sale of Assets		82,400		82,400
Miscellaneous		1,277		1,277
TOTAL REVENUES	2,566,235	14,558,175	3,338,464	20,462,874
EXCESS OF REVENUES OVER EXPENDITURES	2,286,153	-	-	2,286,153

**CARTA
BALANCE SHEET
7/31/2017**

ASSETS

ASSETS	
GENERAL OPERATING (BB&T)	5,029,272.95
SAVINGS (BB&T)	1,242,014.72
INTERMODAL (BB&T)	4,700,000.50
CAPITAL (BB&T)	661,260.00
PETTY CASH	380.60
ACCOUNTS RECEIVABLE	1,207,372.32
HEALTH INS ADVANCE DEPOSIT	958.64
INVENTORY - FUEL	29,104.31
DEFERRED OUTFLOWS: ER CONTR	144,620.00
LAND	564,509.00
CIP	1,555,789.00
VEHICLES	25,642,009.10
EQUIPMENT	1,203,236.00
FAREBOXES	875,095.84
SHELTERS	2,301,692.43
BUS SIGNAGE	62,555.32
FACILITIES	8,918,112.77
ACCUMULATED DEPRECIATION	(29,220,872.49)
PREPAID EXPENSES	137,194.14
UNRESTRICTED NET POSITION	6,295,325.00
RESTRICTED NET POSITION	(5,941,682.00)
TOTAL ASSETS	<u>25,407,948.15</u>

LIABILITIES & EQUITY

LIABILITIES	
PAYROLL	4,947.14
ACCOUNTS PAYABLE	1,363,271.08
COMPENSATED ABSENCES	21,829.67
UNEARNED REVENUE	654,980.00
DUE TO FEDERAL GOVERNMENT	1,235,412.00
OPEB LIABILITY	12,600.00
DEFERRED INFLOWS: PENSION INVEST	329,480.00
PENSION PLAN	1,101,528.00
TOTAL LIABILITIES	<u>4,724,047.89</u>

EQUITY	
CURRENT YEAR FUND BALANCE	2,286,153.22
INVEST IN CAPITAL ASSETS	10,867,655.53
FUND BALANCE	7,530,091.51
TOTAL EQUITY	<u>20,683,900.26</u>

TOTAL LIABILITIES & FUND EQUITY 25,407,948.15

0.00

Service Contractor Oversight Procedure for Federal Awards

August 4, 2017

Charleston Area Regional Transportation Authority

Table of Contents

Introduction	4
Purpose	4
CARTA Role and Responsibilities	4
Staffing Plan	5
Grant Setup	5
Fiscal Monitoring	6
Project Monitoring, Data Collection, and Reporting	6
Programmatic Monitoring	7
Performance Reporting	7
Closeout	7
CARTA Staff Responsibilities	8
Ongoing Duties.....	8
Regular Grant Reviews	8
Risk Assessment	8
Grants Charge Reviews	8
Ongoing Communication, Education, and Training	9
Compliance Reviews	9
Financial Management	9
Performance Monitoring	10
Service Contractor Eligibility	10
Civil Rights	10
Disadvantage Business Enterprises	12
Procurement and Contracting	11
Capital Expenditures	12
Drug and Alcohol Program.....	13
School Bus Services	13
Charter Services	14
State of Good Repair Program.....	15
Issue Specific Compliance Reviews.....	14
Contractor's Responsibilities.....	14
Code of Ethics.....	17
Personal Conflicts of Interest.....	17
Organizational Conflicts of Interest	17
Incorporation of Federal Transit Administration (FTA) Terms of FTA Circular 4220.1E.....	18
Appendix A – Federally Required and Other Model Contract Clauses.....	19
ACCESS TO RECORDS AND REPORTS	20
BONDING REQUIREMENTS	20
BUY AMERICA REQUIREMENTS	24
CARGO PREFERENCE REQUIREMENTS.....	26
CHARTER SERVICE	27
CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT	27

CIVIL RIGHTS LAWS AND REGULATIONS	27
DISADVANTAGED BUSINESS ENTERPRISE (DBE)	30
EMPLOYEE PROTECTIONS	35
ENERGY CONSERVATION	37
FLY AMERICA	38
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION	39
LOBBYING RESTRICTIONS	40
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	41
PATENT RIGHTS AND RIGHTS IN DATA	42
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	43
PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS.....	45
RECYCLED PRODUCTS	45
SAFE OPERATION OF MOTOR VEHICLES	46
SCHOOL BUS OPERATIONS	46
SEISMIC SAFETY	47
SUBSTANCE ABUSE REQUIREMENTS	48
TERMINATION	50
VIOLATION AND BREACH OF CONTRACT	54
Appendix B - Definitions	57

Introduction

As a prime recipient and pass-through entity of federal awards, CARTA is required to ensure that the service contractor complies with all federal requirements. A service contractor is an entity that is hired by a FTA grantee to provide transit service. That grantee receives federal funding assistance through the Federal Transit Administration (FTA).

Simply stated, a service contractor is competitively procured to provide a service. The procurement process is rigorous for contractors and that continues with oversight throughout the contract period. A contractor is an individual or firm (either non-profit or for-profit) which is paid with federal funds by the grantee in return for the delivery or performance of specific services. This contractor normally provides similar goods or services to many different purchasers as part of its regular business and operates in a competitive environment. When the contractor finishes its job, it walks away from the project (having been paid a fair price for quality work) and has no further vested interest in the project. By the same token, the grantee retains its interest or ownership in the project. In most instances, a contractor is simply a vehicle to carry out project activities which the grantee is not capable of undertaking.

Purpose

The purpose of this Oversight Procedure is to describe the procedures and reporting requirements that the Federal Transit Administration (FTA) expects from the grantee with regard to the CARTA's management, organization, and capability to effectively and efficiently plan, develop, manage, and complete a Federally-assisted project.

When contracts are implemented, the grantee is ultimately responsible for, and must ensure technical oversight of, the contractor. Monitoring mechanisms may include:

- Contracting with a consultant to provide project management oversight
- Reviewing requests for proposals and contracts
- Conducting periodic site inspections
- Requiring progress reports
- Attending project review meetings
- Withholding payment of a portion of the grant until final inspection and acceptance of the facility by the grantee

CARTA'S Role and Responsibilities

The following procedures outline the roles and responsibilities of a contractor's compliance with FTA requirements. A recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements [2 C.F.R. § 200.318 General procurement standards, and FTA Circular 4220.1F].

CARTA staff monitors contractor activities through the use of reports, performance measures, customer complaints, field observations, facility inspections, and contract penalties. CARTA staff is required to ensure that grant funds are used for intended purposes, in accordance with laws and regulations. The

contractor is making use and maintaining federal assets and it is CARTA responsibility to ensure compliance.

STAFFING PLAN

Staff activities are led by the Executive Director. The Team works together to coordinate activities between project oversight, grant making and reports, asset inspection and oversight, and system planning activities. The financial activities, including procurement are overseen by the Deputy Director of Finance & Administration and the operational activities are overseen by the Deputy Director of Operations and Support Services. Staff has the technical capacity to manage all aspects of the program through educational attainment and/or years of experience. An annual work program, budget, and establishment of performance goals guide the staff resources. The agency has the necessary physical resources to house the staff and to successfully carry out the required functions.

The following general procedures outline the roles and responsibilities of grant management for the service contractor and reporting on those awards.

GRANT SETUP - After a service contractor has been selected through a contract award, the contract is approved by the CARTA Board of Directors, a grant application executed with the Federal Transit Administration (FTA).

CARTA staff will notify the Grant Accountant the grant has been awarded, provide a budget worksheet outlining the FTA Activity Line (ALI) items, provide a unique six-digit accounting grant extension code that designates a federally funded grant project, activity and Catalog of Federal Domestic Assistance (CFDA) number. Spending cannot begin on a grant-funded contract until the grant and contract have been executed.

CARTA staff monitors the service contractor to ensure that federal awards are used for authorized purposes; are in compliance with laws, regulations agreements; and performance goals are achieved. Once grants are awarded, it is important that CARTA staff properly administer the contract. Specifically, CARTA staff needs to ensure that grant funds are used for intended purposes, in accordance with laws and regulations, and will lead to agreed upon results. Effective grant management increases the likelihood that contract will contribute to agency goals. When managing contracts, CARTA staff will address:

1. Obtaining executed contracts that define expectations
2. Monitoring the financial status of grants
3. Ensuring results through milestone and performance reporting
4. Working with the subject area experts to complete required service contractor monitoring

All payment requests are fully documented and reviewed prior to the disbursement of funds.

For preventive maintenance contracts, a third-party contractor for preventive maintenance is eligible for FTA capital assistance, and, therefore, FTA's third party contracting requirements apply to those contracts when financed with FTA assistance. If a recipient uses its FTA assistance to support specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, and if, through its accounting procedures, a recipient can allocate and trace all its

Federal assistance for capital preventive maintenance to those separate and distinct preventive maintenance contracts, this circular applies only to those specific FTA assisted contracts. If, however, the recipient applies its Federal capital assistance for preventive maintenance as a percentage of its total maintenance costs, and the recipient cannot allocate all of its Federal assistance for capital maintenance to specific preventive maintenance contracts that are separate and distinct from its other maintenance or operations contracts, this circular applies to all the recipient's preventive maintenance contracts, even if specific maintenance or operations contracts were financed wholly without FTA assistance.

For operations contracts, FTA third-party contracting requirements apply to all operating contracts financed with FTA assistance. However, third-party contracting requirements will not apply to operations contracts that recipients finance entirely without FTA assistance. At the time this policy was drafted, CARTA has procured a combined preventive maintenance and operations contract that is financed with FTA assistance. First and foremost, the scope of work enumerated in the third-party contract governs the activities to be performed by the contractor and is incorporated here by reference.

FISCAL MONITORING

The timely receipt of financial records and reports from the contractor is necessary to effectively monitor the financial status of grants. Ineffective grant monitoring increases the risk of improper payments and untimely grant expenditures and may result in the misuse or waste of funds. CARTA staff has various tools to monitor the financial status of grants. Fiscal monitoring includes, but is not limited to:

- ÿ Reviewing bills, invoices or other fiscal documentation;
- ÿ Comparing budgets and/or budget limits to actual costs;
- ÿ Obtaining reasonable documentation that services charged to the grant were actually delivered according to the contract; comparing bills with supporting documentation to determine that costs were allowable, necessary and/or allocable, according to the policies of the federal program.

When reviewing invoices CARTA staff verifies that the charges:

- ÿ Occurred after the beginning of the grant;
- ÿ Are allowable under the grant;
- ÿ Supported with adequate documentation; and
- ÿ Are not duplicate charges.

For adequate documentation the invoice submitted to CARTA staff must have enough information so that someone unrelated to the grant could determine that the charges were appropriate.

Project Monitoring, Data Collection, and Reporting

CARTA maintains a project file to track expenditures, contractor performance, and contractual obligations. The CARTA will be responsible for reporting to FTA and maintaining backup documentation.

The contractor is required to submit to CARTA status reports on a weekly, monthly, quarterly basis, or annual basis, depending on the report. These include a project narrative, data on program compliance, utilization of assets, maintenance of assets, and activities under all federally-required programs, such as

Equal Employment Opportunity (EEO) and Title VI. Service contractors are also required to report, on a monthly basis their efforts in purchasing from DBE vendors and an annual vehicle condition report.

CARTA shall be responsible to submit the following reports to FTA: the annual program of projects status report, milestone activity reports, financial status reports, program performance report, DBE reports and other documentation as required by FTA.

Programmatic Monitoring

Programmatic monitoring compares actual service delivery with the description of performance objectives and measures as identified in the contract. Program monitoring may include any or all of the following:

- ÿ Reviewing the service provisions of the contract to determine what the recipient is to provide and the desired quality;
- ÿ Reviewing the contractor's reports and other materials to determine if services are being provided;
- ÿ Interviewing direct delivery staff and others to determine if services are being performed according to the contract; and
- ÿ Conducting on-site reviews, when appropriate, to check the nature and quality of the services being provided.

Written documentation pertaining to contractor performance, such as progress reports, site visit reports, payment and expenditure data, memoranda of verbal discussions, and written correspondence, should be maintained and reviewed to ensure satisfactory progress.

PERFORMANCE REPORTING

CARTA staff is responsible for FTA quarterly financial and milestone reporting. Site visits are planned on a daily basis. CARTA staff maintains documentation on monitoring activities performed.

CLOSEOUT - When the project is complete, a final report must be filed with FTA. The final report includes the actual completion dates for all the project milestones listed in the grant application, a final financial status report and list of assets purchased with the grant.

CARTA must initiate close-out of a grant when all approved activities are completed and/or applicable federal funds expended. For grants containing several projects, CARTA staff works with the contractor to complete the close-out report.

All close-out documentation must be submitted within 90 days of the completion of all activities in the grant. This requires notifying FTA through the grant management system, currently TrAMS that the grant is ready for close-out. CARTA staff will electronically submit the following in TrAMS as part of the grant close-out process:

1. Final budget reflecting actual project costs by scope and activity;
2. Final FSR;
3. Final narrative Milestone Progress Report (MPR) indicating the actual completion dates of each ALL; a discussion of each ALL contained in the final budget and list of project property purchased under the grant;

4. Request to deobligate any unexpended balance of Federal funds; and
5. Any other reports required as part of the terms and conditions of the grant.

CARTA Staff Responsibilities

As a steward of public funds, CARTA is responsible for ensuring that grant funds are used properly and organizations comply with all of the requirements associated with receiving state and/or federal grant funds. CARTA is dedicated to working together with contractor to provide technical assistance and guidance in meeting those requirements. CARTA staff performs ongoing activities in addition to conducting compliance reviews and other issue specific reviews as necessary.

ONGOING DUTIES - CARTA staff monitors contractors' activities as necessary to ensure that federal awards are used for authorized purposes; are in compliance with laws, regulations agreements; and performance goals are achieved. To do so, the CARTA staff must understand the contractor's environment, systems, and controls sufficiently to identify the level and methods of monitoring required. The level of monitoring should appropriately reflect the level of risk or exposure that exists from sub-granting the funds.

This section discusses the tools the CARTA staff uses in assessing and measuring program compliance, and provides an overview of the reporting requirements associated with the funds being managed. To help ensure compliance with state and federal laws as well as program requirements, the CARTA staff regularly:

- ÿ Reviews grants
- ÿ Assesses risk
- ÿ Reviews grant charges
- ÿ Provides ongoing communication and training

REGULAR GRANT REVIEWS - Grants Program staff review all documentation associated with each payment request. Reimbursements are monthly or quarterly. Staff is in constant contact with service contractors for the duration of the grant and provides additional assistance as necessary.

RISK ASSESSMENT - Throughout the contract, the Grant Program Staff evaluates the service contractor to determine the level of assistance and oversight necessary to ensure compliance with requirements. When completing the risk assessment the Grant Program Staff factors in:

- ÿ Grant sources and amounts;
- ÿ Financial audits and findings;
- ÿ Past site review and findings; and
- ÿ Quarterly performance reports.

GRANT CHARGE REVIEWS - All reimbursements require supporting documentation and are reviewed for:

- ÿ Compliance with grant award;
- ÿ Compliance with CARTA policy and procedures;
- ÿ Federal language in agreements; and
- ÿ Supporting documentation.

Other areas will be sampled during a site visit.

ONGOING COMMUNICATION, EDUCATION, AND TRAINING - CARTA staff provides regular support and guidance to the service contractor and CARTA staff to assist with understanding federal requirements and practical ways to be in compliance with grant requirements. As part of this communication, CARTA staff identifies areas that need clarification and training. CARTA staff prepares written guides for the service contractor and researches compliance for management.

COMPLIANCE REVIEWS - CARTA conducts periodic compliance reviews of the service contractor to ensure that they are in compliance with grant requirements¹. These reviews ensure that the service contractor has adequate financial systems and is properly using grant funds. The Grant Compliance Analyst will perform annual compliance reviews of high risk and/or high profile grants in accordance with the risk assessment. Prior to a review, the Grant Compliance Analyst will contact the Project Manager to discuss any concerns or issues. During the site visit, the Grant Compliance Analyst will review compliance with grant agreements and federal requirements. An example of an annual compliance review is located in Attachment B: Service Contractor Monitoring Compliance Review².

The compliance review template will change year to year depending on results, past compliance reviews, changes in service, requirement updates, or national trends. If any issues are identified during the site review, CARTA staff will follow up with the service contractor to ensure that the issues are adequately addressed. As part of this effort, CARTA staff will prepare detailed policies and procedures and provide training to service contractors in areas of non-compliance.

This section outlines federal requirements that CARTA staff will review during site visits.

FINANCIAL MANAGEMENT - Financial management is one of the most important practices in the management of federal funds. By reviewing service contractor financial management, CARTA staff verifies that service contractors have effective control and accountability for federal funds. During the site visit, CARTA staff will review financial management practices to provide reasonable assurance that:

- ÿ Proper records are maintained for equipment acquired with federal awards, equipment is adequately safeguarded and maintained, disposition or encumbrance of any equipment or real property is in accordance with federal requirements, and the federal awarding agency is appropriately compensated for its share of any property sold or converted to non-federal use
- ÿ Program income is correctly earned, recorded, and used in accordance with the program requirements

During invoice review, CARTA staff will verify that:

- ÿ Federal awards are expended only for allowable activities and that the costs of goods and services charged to Federal awards are allowable and in accordance with applicable principles
- ÿ Invoices are requested only for allowable costs

¹ 1 In accordance with FTA Circular 4220.1F Third Party Contracting Requirements, FTA Circular 5010.1D Grant Management Requirements, and 49 CFR Section 18.37 Subgrants.

² Certain grant programs may have additional compliance requirements that will be reviewed during a site visit.

ÿ Contractors and subcontractors were properly notified of the Davis-Bacon Act requirements and the required certified payrolls were submitted to the non-Federal entity, if applicable

PERFORMANCE MONITORING - CARTA staff often has performance measures. Performance will be reported in the FTA Quarterly Milestone reports.

SERVICE CONTRACTOR ELIGIBILITY - Service contractor eligibility is determined during the application review process by the project evaluation team.

CIVIL RIGHTS - Service contractors must not discriminate based on race, color, national origin, religion, sex, sexual orientation, marital status, age or disability. To verify compliance with civil rights laws and regulations, Human Resource staff reviews equal employment opportunity (EEO) and affirmative action policies and procedures, Title VI plans and updates, and accessibility.

Equal Employment Opportunity Program - Service contractors and contractors that employ 50 or more transit-related employees, must submit an EEO plan to CARTA staff. The plan will be forwarded to the CARTA EEO representative, who will review and approve the program.

Title VI - Service contractors are required to follow the Agency's Title VI policy that describes how they will ensure non-discrimination to limited English proficiency, minority, and low-income populations in their services. As a designated recipient of FTA funds, CARTA receives, administers, and allocates funds to service contractors and is responsible for documenting compliance with Title VI.

CARTA's responsibilities include monitoring service contractor compliance with Title VI, collecting and reviewing Title VI documents, including service contractor Title VI data to FTA, and providing assistance and support to service contractors. To assist with the requirement, the *Service contractor's Guide to Title VI Compliance* was developed to help service contractors understand the requirements (Attachment C). If a service contractor is not in compliance with Title VI regulations, the CARTA staff will work with the service contractor to ensure compliance. This includes providing data, information, guidance, and support for the full development and formal adoption of the service contractor Title VI program components. A service contractor Title VI work plan is included for guidance (Attachment D).

To track Title VI compliance, the CARTA staff will:

- ÿ Document service contractor compliance with the general requirements.
- ÿ Collect and maintain service contractor Title VI program documents on a designated schedule.
- ÿ Forward service contractor Title VI information as requested by the FTA.

DISADVANTAGED BUSINESS ENTERPRISE – The Charleston Area Regional Transportation Authority (CARTA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. CARTA receives Federal financial assistance from the Federal Transit Administration (FTA), and as a condition of receiving this assistance, CARTA has signed an assurance that it will comply with 49 CFR Part 26. As a result any entity receiving federal funds, from CARTA must comply with CARTA's DBE Program and 49 CFR Part 26.

As a recipient of FTA funds, CARTA receives, administers, and allocates funds to service contractors and is responsible for documenting compliance with 49 CFR Part 26. CARTA's responsibilities include

monitoring service contractor compliance with 49 CFR Part 26, collecting and reporting DBE participation information to the FTA and provide assistance and support to service contractors.

CARTA will work with the service contractor to ensure compliance with 49 CFR Part 26. This will include providing information, guidance and support for DBE participation reporting. Service contractors may refer to CARTA's Disadvantaged Business Program by visiting <http://www.ridecarta.com/business-center/title-vi>.

The service contractor is required to assist CARTA in fulfilling its usage goals for the Disadvantaged Business Enterprise (DBE) program. The Small Business/DBE staff will review service contractor awards to determine if they are satisfying their commitment.

Accessibility - Titles II and III of the Americans with Disabilities Act of 1990 (ADA) provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

CARTA staff will ensure that service contractors comply with the ADA requirements when:

- ÿ Training drivers;
- ÿ Maintaining vehicles and facilities that are required, to make them accessible to and usable by persons with disabilities, including wheelchair users; and
- ÿ Constructing transit facilities.

PROCUREMENT AND CONTRACTING

CARTA is responsible for ensuring that service contractor compliance with procurement and contracting rules. Service contractors are required to follow CARTA's written procurement procedures that comply with state and federal law to include specific required clauses in FTA- funded procurements, verify that contractors are not suspended or debarred, and that if applicable, Buy America provisions are followed.

Procurement staff will verify that the service contractor procurement procedures are in compliance with FTA Circular 4220.1F, Third Party Contracting Guidance. Additionally, Procurement staff will review procurements and contracting to ensure policies and procedures were followed, contractors were not suspended or debarred, all federal clauses were included in the procurement and contract, and that if applicable Buy America provisions were followed.

Suspension and Debarment - FTA grantees not only are required to certify that they are not excluded from federally assisted transactions, but also are required to ensure that none of the grantee's "principals": service contractors, and third-party contractors and subcontractors are debarred, suspended, ineligible or voluntarily excluded from participation in federally assisted transactions. This requirement only applies to awards greater than \$25,000. To prevent fraud, waste, and abuse in state and federal transactions, persons or entities, which by defined events or behavior, potentially threaten the integrity of federally administered programs are excluded from participating in FTA- assisted programs.

Lobbying - Recipients of federal grants and contracts exceeding \$100,000 must certify compliance with P.L. 101- 121, Section 319, Restrictions on Lobbying, before they can receive funds. In addition, grantees are required to impose the lobbying restriction provisions on their contractors. This requirement applies to awards greater than \$100,000.

CAPITAL EXPENDITURES

When a grant includes authorization for capital expenditures, CARTA staff in conjunction with Procurement will review compliance with Buy America, prevailing wage, equipment and real property management, maintenance procedures, and equipment compliance certifications. Requirements are presented below:

Prevailing Wage - The prevailing wage Davis-Bacon and related acts, apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek. The overtime provisions of the Fair Labor Standards Act may also apply to DBA-covered contracts.

Equipment and Real Property - Management - Provide reasonable assurance that proper records are maintained for equipment acquired with federal awards, equipment is adequately safeguarded and maintained, disposition or encumbrance of any equipment or real property is in accordance with Federal requirements, and the Federal awarding agency is appropriately compensated for its share of any property sold or converted to non-Federal use.

Maintenance Procedures - All Section 5307, Section 5309, Section 5337, Section 5339, Section 5310, Section 5316 and Section 5317 grant recipients must keep federally funded equipment and facilities in safe, operating order. Recipients must have policies and procedures to maintain vehicles. Recipients must maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible. ADA accessibility features must be repaired promptly if they are damaged or out of order. Recipients must establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

Equipment Compliance Certification - Section 5307, Section 5309, Section 5337, Section 5339, Section 5310, Section 5316, and Section 5317 grantees using federal or state funds to purchase vehicles are required to conduct pre-award and post-delivery reviews to confirm Buy America, purchaser's requirements, and Federal Motor Vehicle Safety Standards (FMVSS) and certify compliance for all

revenue service rolling stock procurements. Recipients must keep documentation showing they complied when procuring revenue rolling stock. A grantee must ensure that any state or federally funded, contractor operated equipment is controlled.

DRUG AND ALCOHOL

Depending on the grant, there can be different drug and alcohol related requirements. Drug Free Workplace and testing are presented below. CARTA staff will work with Safety staff to ensure that service contractors have a program in place, if applicable.

*Drug Free Workplace*³ - Section 5307, Section 5309, Section 5311, Section 5337, and Section 5339 recipients and their contractors must have a drug and alcohol testing program in place for all safety sensitive employees. Section 5310, Section 5316, and Section 5317 are not subject to FTA's Drug and Alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration rule for employees who hold Commercial Drivers Licenses. If a grantee uses a contract service provider or maintenance provider to perform safety sensitive functions, these contractors also are subject to the provisions of these regulations. For transit agencies that use volunteer drivers, the volunteers are not subject to testing.

Drug and Alcohol Testing (Safety Sensitive Employees) - FTA drug and alcohol testing requirements apply to service contractors with safety sensitive employees that receive FTA funds under Sections 5307, 5309, 5337, 5339 or 5311, except where funds are exclusively for facilities or planning and the service contractor does not fund operations. CARTA is responsible for passing through drug and alcohol testing requirements, providing technical assistance in understanding and meeting the requirements, and overseeing the drug and alcohol programs of service contractors, contractors, subcontractors, and lessees with safety-sensitive employees.

CARTA's Drug and Alcohol oversight program is administered by the safety division. Prior to conducting a site visit CARTA staff contacts the safety division to determine if the service contractor has been reviewed. The Safety Division prepares, maintains, and submits the annual (Management Information System) MIS reports to FTA. The annual MIS reports includes Section 5307, 5309, 5337, 5339 and 5311 service contractors, contractors, subcontractors, and lessees with safety sensitive employees.

SCHOOL BUS SERVICES

If applicable, CARTA staff will discuss the following restrictions with service contractors. Section 5307, Section 5309, Section 5337, Section 5339, Section 5310, Section 5316 and Section 5317 grant recipients, and their contractors, cannot engage in school bus operations (providing vehicles or facilities) exclusively for the transportation of students and school personnel in competition with private school

³The FTA-mandated drug and alcohol testing program is separate from and in addition to the provisions of the Drug-Free Workplace Act (DFWA)

bus operators. In no case can federally funded equipment or facilities be used to provide exclusive school bus service⁴.

CHARTER SERVICES

If applicable, CARTA staff will discuss the following restrictions with service contractors. Section 5307, Section 5309, Section 5337, Section 5339, Section 5310, Section 5316 and Section 5317 recipients and their contractors, are from using federally-funded equipment or facilities to provide charter service, except on an incidental basis; and then, only when one or more of the seven exceptions set forth in the charter service regulation in 49 CFR Section 604.9 (b) apply. Other conditions include recovering the fully allocated cost of the service and putting the revenues earned back into your transportation Program⁵.

STATE OF GOOD REPAIR PROGRAM

If applicable, The Recipient agrees to develop a Transit Asset Management Plan that complies with federal transit laws, specifically 49 U.S.C. § 5326 and 5337(a)(4), FTA regulations, "Transit Asset Management; National Transit Database," 49 C.F.R. parts 625 and 630, and other applicable federal laws, regulations, and requirements. The service contractor also must comply with applicable laws, regulations, and requirements and follow applicable guidance that implement the Public Transportation Safety Program provisions of 49 U.S.C. § 5329(b) through (d), except as FTA determines otherwise in writing.

Issue Specific Compliance Reviews

During compliance review, risk assessment, or grant charge reviews, CARTA staff may identify certain compliance areas where service contractors need additional assistance. CARTA staff will research the topic area and levels of compliance to prepare documents and processes necessary to facilitate further review assistance. If service contractors need training or guidance translating federal requirements, CARTA staff may prepare documents for compliance. After guidance is distributed, CARTA staff and appropriate CARTA staff will meet with service contractors to assist with developing a plan (Attachment C) for compliance.

Contractor's Responsibilities

The scope of work enumerated in the third-party contract governs the activities to be performed by the contractor and is incorporated here by reference. Without limiting the obligations set forth, the responsibilities of the contractor are generally described below.

The contractor shall:

⁴This prohibition does not apply to school "tripper service." Tripper service is defined as regularly scheduled mass transportation service open to the public, which is designed or modified to accommodate the needs of school students and personnel. Such service must be open to the public, must serve regular transit stops, and must be delineated on route schedules and maps. Vehicles may not display a "school" sign.

⁵Charter services means transportation using buses or vans or facilities, funded with FTA grants, which are provided to a group of persons who because of common purpose, have acquired exclusive use of the vehicle or service. The group operates under a single contract, at a fixed charge for the vehicle or service; and the group travels together under an itinerary either specified in advance or modified after the trip begins.

- ÿ Provide safe, timely, professional, and reliable transit services over the Fixed Route and Paratransit system;
- ÿ Meet all operations, equipment, and maintenance requirements established herein;
- ÿ Provide transit service in accordance with the Schedules or as otherwise established by CARTA pursuant to this Contract;
- ÿ Exercise full control supervision over its Charleston operation employees, including their compensation and discharge. Contractor shall be responsible as to all matters relating to payment of such employees, including compliance with Social Security, withholding, and all other regulations governing such matters. Contractor shall employ sufficient personnel to fulfill the obligations under the resulting Contract;
- ÿ Establish and maintain all employment policies related to the Contractor's personnel;
- ÿ Perform all functions and do all things necessary for the management of its employees, including but not limited to the authority to fix wages, hours and other terms and conditions of employment, to bargain with its employees or their representatives and enter into collective bargaining agreements, to establish and enforce rules and regulations and handling and resolving grievances of its employees, to hire, fire, promote, layoff, supervise and discipline its employees including discharge of employees, all of the above whether arising by collective bargaining agreement or otherwise;
- ÿ Provide CARTA with copies of all Agreements with their employees or their representative organization which effect operation or change to operations;
- ÿ Be responsible for personnel, training and development in accordance with high industry standards;
- ÿ
- ÿ Maintain written and verbal communications with CARTA to CARTA's satisfaction;
- ÿ Comply with and/or assist with CARTA's monitoring and auditing programs;
- ÿ Respond promptly and precisely to CARTA's requests for information according to the schedule of reporting set by CARTA;
- ÿ File operating, financial, and performance reports and invoices as directed by CARTA;
- ÿ Investigate accidents and unsafe practices and provide daily reports of those investigations to CARTA;
- ÿ Provide insurance coverage and bonding as required herein;
- ÿ Immediately report to CARTA management any accidents, including passenger accidents, any non-routine event, or any operational deviation;
- ÿ Maintain, preserve, and protect all vehicles, facilities, equipment, tools, and materials provided by CARTA;
- ÿ Develop and maintain an effective customer service training program;
- ÿ Develop and maintain driver training and testing program;
- ÿ Execute data collection services as requested by CARTA;
- ÿ Provide appropriate security measures for the Fixed Route, Paratransit and Facilities system in accordance with plans and programs approved by CARTA;
- ÿ Provide for full vehicle scheduling, runcutting, and blocking. Provide full dispatch function appropriate in scope to the service provided and approved by CARTA;
- ÿ Ensure that the radios provided by CARTA in Vehicles and the Facility for use in communicating with vehicle operators and the Facility are operational at all times are properly maintained in accordance with a program to be approved by CARTA;

- ÿ Refer all media inquiries relating to service provided under any to CARTA and cooperate in providing public information through CARTA;
- ÿ Promptly notify CARTA of any deficiencies or defects in the Facility or Vehicles furnished by CARTA in accordance with the Contract;
- ÿ Provide all tools needed for the maintenance of the Vehicle except those permanently affixed to the Facility and those provided by CARTA in the inventory under this Contract;
- ÿ Provide office equipment needed for operation of the Fixed Route and Paratransit System including, but not limited to, computers, including hardware, software, and peripherals, furniture, fax machines, and copiers, except for the equipment provided by CARTA under inventory under this Contract;
 - o Acquire and maintain a parts inventory adequate to properly maintain the type and number of vehicles to meet service requirements;
 - o Monitor the level of fuel supply and timely order fuel under CARTA's authorization for State Contract fuel purchases, to keep all Vehicles in full operation;
 - o Comply with CARTA's approved storm water pollution prevention plan;
 - o Provide security for the Vehicles and Facility as provided in the Lease;
 - o Develop a fire and emergency evacuation plan for the Facility to be approved by CARTA;
 - o Dispose of all hazardous materials including, but not limited to, waste oil, grease and automatic transmission fluid in accordance with applicable Local, State and Federal Laws and Regulations;
 - o Notify CARTA of any issues or concerns in any System expansions, alterations, and/or reductions in service;
 - o Participate in CARTA's planning process;
 - o Notify CARTA of any issues or concerns in proposed capital purchases;
 - o Cooperate with law enforcement agencies with respect to security activities on- board Vehicles and elsewhere;
 - o Perform all work and services in strict accordance with all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices and other agents;
 - o Allow services to be inspected or reviewed by an employee of CARTA or designated agent at any time and place selected by CARTA;
 - o Study, evaluate, and introduce progressive operational methods and techniques. The Contractor shall periodically make recommendations as to routes, fares, and service standards, subject to the determination and approval by CARTA as provided by applicable law. This shall include the use in the Contractor's discretion of the physical plant, building, equipment, vehicles, and other property provided by CARTA and the authority of the Contractor to determine and set efficient and cost-effective procedures and method for such use;
- ÿ Provide monthly reports to CARTA as to the status of the system, and make recommendations to CARTA as necessary to promote the safe, cost- effective, and efficient operation of the public transportation system, such as to the acquisition, replacement or refurbishing of fleet equipment, maintenance and improvement of CARTA facilities, and improvement of the transportation services provided to the public; and
- ÿ Be required to direct all customer service requests to the appointed CARTA staff. CARTA shall provide Customer Service.
- ÿ Contractor shall not be compensated for any service that is operated without written authorization from the Contracting Officer. Requests from the fire department and police department in emergency situations may be provided via verbal client approval, or if the client cannot be reached based on the decision of the Contractor.

- Y CARTA shall pay Contractor for its Tel-A-Ride certification and recertification as described in the table above per certification or recertification ("Certification Cost") during the term of this Agreement.
- Y The Service Hour Cost and Certification Cost set forth in this section includes all labor, materials, tools, equipment, and other costs necessary to fully carry out the scope of work of this Contract, except: (1) property and equipment furnished by CARTA or bought by Contractor at CARTA's request pursuant to hereunder and (2) costs of fuel borne by CARTA. Unless otherwise specifically provided in this Contract, the prices stated herein are fixed pursuant to this Section and shall not be adjusted as a result of increases in Contractor's costs of performance.

Code of Ethics. The Contractor agrees to comply with a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or sub agreements financed with Federal assistance. The Contractor agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential third party contractor at any tier or subcontractor at any tier or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Contractor may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Contractor agrees that its code or standards shall also prohibit the its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Contractor agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party contractors or subcontractors or their agents. In addition, the Contractor agrees to adhere to the CARTA Board's approved policies, procedures and ethical standards.

Personal Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall prohibit the Contractor's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or sub agreement supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

Organizational Conflicts of Interest. The Contractor agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or sub agreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subcontractor or impair its objectivity in performing the contract work.

Incorporation of Federal Transit Administration (FTA) Terms of FTA Circular 4220.1E. This Agreement includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in this Agreement, all contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, including all footnotes electronically added from time to time by FTA to the electronic version of said Circular, and hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in

this Agreement. The electronic version of FTA Circular 4220.1E may be found at www.fta.dot.gov. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CARTA requests, which would cause CARTA to be in violation of the FTA terms and conditions.

Appendix A – Federally Required and Other Model Contract Clauses

ACCESS TO RECORDS AND REPORTS 20

BONDING REQUIREMENTS 20

BUY AMERICA REQUIREMENTS 24

CARGO PREFERENCE REQUIREMENTS 26

CHARTER SERVICE 27

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT 27

CIVIL RIGHTS LAWS AND REGULATIONS 27

DISADVANTAGED BUSINESS ENTERPRISE (DBE) 30

EMPLOYEE PROTECTIONS 35

ENERGY CONSERVATION 37

FLY AMERICA 38

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION 39

LOBBYING RESTRICTIONS 40

NO GOVERNMENT OBLIGATION TO THIRD PARTIES 41

PATENT RIGHTS AND RIGHTS IN DATA 42

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 43

PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS 45

RECYCLED PRODUCTS 45

SAFE OPERATION OF MOTOR VEHICLES 46

SCHOOL BUS OPERATIONS 46

SEISMIC SAFETY 47

SUBSTANCE ABUSE REQUIREMENTS 48

TERMINATION 50

VIOLATION AND BREACH OF CONTRACT 54

ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325(g)
2 C.F.R. § 200.333
49 C.F.R. part 633

Applicability to Contracts

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

Flow Down

The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

Access to Records and Reports

- a. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

BONDING REQUIREMENTS

2 C.F.R. § 200.325
31 C.F.R. part 223

Applicability to Contracts

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has *not* been made, the following minimum requirements apply:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid

guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.

Model Clauses/Language

There is no required language for bonding requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

Bond Requirements

Bid Guaranty

Bidders shall furnish a bid guaranty in the form of a bid bond, or certified treasurer’s or cashier’s check issued by a responsible bank or trust company, made payable to the RECIPIENT. The amount of such guaranty shall be equal to **\$\$\$\$** or **X%** of the total bid price.

In submitting this bid, it is understood and agreed by bidder that the RECIPIENT reserves the right to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [90] days subsequent to the opening of bids, without the written consent of RECIPIENT.

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

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

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

Performance Guaranty

A Performance Guaranty in the amount of **100%** of the Contract value is required by the Recipient to ensure faithful performance of the Contract. Either a Performance Bond or an Irrevocable Stand-By Letter of Credit shall be provided by the Contractor and shall remain in full force for the term of the Agreement. The successful Bidder shall certify that it will provide the requisite Performance Guaranty to the RECIPIENT within ten (10) business days from Contract execution. The RECIPIENT requires all Performance Bonds to be provided by a fully qualified surety company acceptable to the RECIPIENT and

listed as a company currently authorized under 31 C.F.R. part 22 as possessing a Certificate of Authority as described hereunder. RECIPIENT may require additional performance bond protection when the contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The RECIPIENT may secure additional protection by directing the Contractor to increase the amount of the existing bond or to obtain an additional bond.

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

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

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

Payment Bonds

A Labor and Materials Payment Bond equal to the full value of the contract must be furnished by the contractor to Recipient as security for payment by the Contractor and subcontractors for labor, materials, and rental of equipment. The bond may be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 C.F.R. part 223 as possessing a Certificate of Authority as described thereunder.

Sample Bond Certifications

Performance Guarantee Certification

The undersigned hereby certifies that the Bidder shall provide a Performance Guarantee in accordance with the Specifications.

Designate below which form of Performance Guarantee shall be provided:

_____ Performance Bond
_____ Irrevocable Stand-By-Letter of Credit

BIDDER'S NAME: _____
AUTHORIZED SIGNATURE: _____
TITLE: _____
DATE: _____

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: that _____ (*Insert full name and address and legal title of Contractor*) as Principal, hereinafter called Contractor, and _____ (*Insert full name and address or legal title of Surety*) as Surety, hereinafter called Surety, are held and firmly bound unto RECIPIENT as Obligee, hereinafter called Authority, in the amount of Dollars (\$) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated , 20____, entered into a contract with the RECIPIENT for Contract No. _____, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the RECIPIENT. Whenever Contractor shall be, and is declared by the RECIPIENT to be in default under the Contract, the RECIPIENT having performed RECIPIENT'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the RECIPIENT elects, upon determination by the RECIPIENT and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and the Authority, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the RECIPIENT to Contractor under the Contract and any amendments thereto, less the amount properly paid by the RECIPIENT to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the RECIPIENT or the heirs, executors, administrators or successors of the RECIPIENT.

Signed and sealed this day of 20_____.

WITNESS

(Title)

PRINCIPAL

(SEAL)

WITNESS

(Title)

SURETY

(SEAL)

Attach hereto proof of authority of officers or agents to sign bond.

Irrevocable Stand-By Letter Of Credit Certificate

The undersigned states that he/she is _____ of the
(Title)

_____ (The "Beneficiary") and hereby Certifies on behalf of the
(Name of Beneficiary)

Beneficiary to _____ (the "Bank"), with Reference to Irrevocable Standby
(Name of Issuing Bank)

Letter of Credit No. _____ Issued by the Bank (the "Letter of Credit"), that:

1. The undersigned is duly authorized to execute and deliver this certificate on behalf of the Beneficiary.
2. The Beneficiary is making a drawing under the Letter of Credit.
3. An Event of Default has occurred under Contract No. .
4. The amount of the draft presented with this certificate does not exceed the total maximum amount drawable today under the Letter of Credit as provided therein.

IN WITNESS WHEREOF, this certificate is executed this day of_____, 20_____.

(NAME OF BENEFICIARY)

By: _____

Its: _____

Bank Draft

FOR VALUE RECEIVED

Pay on presentment to _____ the sum of _____ Dollars (\$)
(Name of Beneficiary)

Charge the Account of _____ Irrevocably Standby Letter of
(Name of Issuing Bank)

Credit No. _____ Dated: 20__.

To _____
(Name of Issuing Bank)

NAME OF BENEFICIARY

By _____

Its _____

BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 C.F.R. part 661

Applicability to Contracts

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: [The Federal Transit Administration's Buy America website.](#)

Flow Down

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.

Buy America

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The [bidder or offeror] must submit to [Recipient] the appropriate Buy America certification below with its [bid or offer]. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron or manufactured products, use the certifications below.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____
Signature: _____
Company: _____
Name: _____
Title: _____

In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment) use the following certifications:

Certificate of Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 C.F.R. § 661.11.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

Certificate of Non-Compliance with Buy America Rolling Stock Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2)(C), and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

CARGO PREFERENCE REQUIREMENTS

46 U.S.C. § 55305

46 C.F.R. part 381

Applicability to Contracts

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

Flow Down

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

Model Clause/Language

The Maritime Administration (MARAD) regulations at 46 C.F.R. § 381.7 contain suggested contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

Cargo Preference - Use of United States-Flag Vessels

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

CHARTER SERVICE
49 U.S.C. 5323(d) and (r)
49 C.F.R. part 604

Applicability to Contracts

The Charter Bus requirements apply to contracts for operating public transportation service.

Flow Down Requirements

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.

Charter Service

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

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

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

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

42 U.S.C. §§ 7401 – 7671q
33 U.S.C. §§ 1251-1387
2 C.F.R. part 200, Appendix II (G)

Applicability to Contracts

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Flow Down

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

Recipients can draw on the following language for inclusion in their federally funded procurements.

The Contractor agrees:

1. It will not use any violating facilities;
2. It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
3. It will report violations of use of prohibited facilities to FTA; and
4. It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

CIVIL RIGHTS LAWS AND REGULATIONS

Applicability to Contracts

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

1. Federal Equal Employment Opportunity (EEO) Requirements. These include, but are not limited to:
 - a. Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b. Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. Nondiscrimination on the Basis of Sex. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.* and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. Nondiscrimination on the Basis of Age. The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 *et seq.*, and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 *et seq.*, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Model Clause/Language

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Civil Rights and Equal Opportunity

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

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

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. part 26

Background and Applicability

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith. FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:

[Federal Transit Administration website Disadvantaged Business Enterprise page click here](#)
[Department of Transportation website Disadvantaged Business Enterprise Program click here](#)

Flow Down

The DBE contracting requirements flow down to all third party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

Clause Language

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or

- 4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

Overview

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

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The AGENCY shall make all determinations with regard to whether or not a Bidder/Offeror is in compliance with the requirements stated herein. In assessing compliance, the AGENCY may consider during its review of the Bidder/Offeror's submission package, the Bidder/Offeror's documented history of non-compliance with DBE requirements on previous contracts with the AGENCY.

Contract Assurance

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

DBE Participation

For the purpose of this Contract, the AGENCY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the *[certifying agency or the*

- Unified Certification Program (UCP)*; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
 3. Certified by another agency approved by the AGENCY.

DBE Participation Goal

The DBE participation goal for this Contract is set at ____%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than** ____% of the total Contract price. Failure to meet the stated goal at the time of proposal submission **may** render the Bidder/Offeror non-responsive.

Proposed Submission

Each Bidder/Offeror, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeror intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeror has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeror may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the AGENCY.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the **DBE Participation Schedule**.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

Good Faith Efforts

If the Bidder/Offeror is unable to meet the goal set forth above (DBE Participation Goal), the AGENCY will consider the Bidder/Offeror's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the AGENCY will consider as part of the Bidder/Offeror's good faith efforts include, but are not limited to, the following:

1. Documented communication with the AGENCY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the AGENCY generally informs potential Bidder/Offeror's of DBE subcontracting opportunities;
3. The Bidder/Offeror's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeror shall provide the following details, at a minimum, of the specific efforts it made to

negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

Administrative Reconsideration

Within five (5) business days of being informed by the AGENCY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeror may request administrative reconsideration. The Bidder should make this request in writing to the AGENCY's [*Contact Name*]. The [*Contact Name*] will forward the Bidder/Offeror's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeror will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The AGENCY will send the Bidder/Offeror a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Termination of DBE Subcontractor

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the AGENCY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

Continued Compliance

The AGENCY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, **it will be the responsibility of the Contractor to submit quarterly written reports to the AGENCY that** summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator with copies provided to the [Agency Name1] and [Agency Name2]. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The AGENCY to have access to necessary records to examine information as the AGENCY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

Sanctions for Violations

If at any time the AGENCY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.

DBE UTILIZATION FORM

The undersigned Bidder/Offeror has satisfied the requirements of the solicitation in the following manner (please check the appropriate space):

_____ The Bidder/Offer is committed to a minimum of _____% DBE utilization on this contract.

_____ The Bidder/Offeror (if unable to meet the DBE goal of %) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

DBE PARTICIPATION SCHEDULE

The Bidder/Offeror shall complete the following information for all DBE’s participating in the contract that comprises the DBE Utilization percent stated in the DBE Utilization Form. The Bidder/Offeror shall also furnish the name and telephone number of the appropriate contact person should the Authority have any questions in relation to the information furnished herein.

DBE IDENTIFICATION AND INFORMATION FORM

Name and Address	Contact Name and Telephone Number	Participation Percent (Of Total Contract Value)	Description Of Work To Be Performed	Race and Gender of Firm

EMPLOYEE PROTECTIONS

- 49 U.S.C. § 5333(a)
- 40 U.S.C. §§ 3141 – 3148
- 29 C.F.R. part 5
- 18 U.S.C. § 874
- 29 C.F.R. part 3
- 40 U.S.C. §§3701-3708
- 29 C.F.R. part 1926

Applicability to Contracts

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:

1. Prevailing Wage Requirements
 - a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
 - b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
 - c. U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.
2. “Anti-Kickback” Prohibitions
 - a. Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;
 - b. Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
 - c. U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. part 3.
3. Contract Work Hours and Safety Standards
 - a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and
 - b. U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. The Davis-Bacon Act and the Copeland "Anti-Kickback" Act apply to all prime construction, alteration or repair contracts in excess of \$2,000. The Contract Work Hours and Safety Standards Act apply to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers.

Model Clause/Language

The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In addition, recipients can draw on the following language for inclusion in their federally funded procurements.

Prevailing Wage and Anti-Kickback

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

Contract Work Hours and Safety Standards

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual

was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction

The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.

The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

ENERGY CONSERVATION

42 U.S.C. 6321 *et seq.*
49 C.F.R. part 622, subpart C

Applicability to Contracts

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

FLY AMERICA

49 U.S.C. § 40118
41 C.F.R. part 301-10
48 C.F.R. part 47.4

Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Model Clause/Language

The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements. FTA proposes the following language, modified from the Federal clause.

Fly America Requirements

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

"United States" means the 50 States, the District of Columbia, and outlying areas.

"U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

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

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

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

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

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

- 2 C.F.R. part 180
- 2 C.F.R. part 1200
- 2 C.F.R. § 200.213
- 2 C.F.R. part 200 Appendix II (I)
- Executive Order 12549
- Executive Order 12689

Background and Applicability

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

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

Flow Down

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with

subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

Model Clause/Language

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

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

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

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

LOBBYING RESTRICTIONS

31 U.S.C. § 1352
2 C.F.R. § 200.450
2 C.F.R. part 200 appendix II (J)
49 C.F.R. part 20

Applicability to Contracts

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Flow Down

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

Model Clause/Language

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

Lobbying Restrictions

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____	Signature of Contractor's Authorized Official
_____	Name and Title of Contractor's Authorized Official
_____	Date

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

The No Obligation clause applies to all third party contracts that are federally funded.

Flow Down

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

No Federal Government Obligation to Third Parties.

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

PATENT RIGHTS AND RIGHTS IN DATA

2 C.F.R. part 200, Appendix II (F)
37 C.F.R. part 401

Applicability to Contracts

If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

Flow Down

The Patent Rights and Rights in Data requirements flow down to all third party contractors and their contracts at every tier that meet the definition of a research-type project under 37 U.S.C. § 401.2.

Model Clause/Language

Recipients can draw on language provided in 37 C.F.R. § 401.3 for appropriate Patent Rights and Data Rights Clauses for use in their federally funded research, development, demonstration, or special studies projects. Recipients should consult legal counsel for guidance in developing an appropriate Intellectual Property Agreement. At a minimum, recipients can include the following language in their standard boilerplates.

Intellectual Property Rights

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

implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

49 U.S.C. § 5323(l) (1)
31 U.S.C. §§ 3801-3812
18 U.S.C. § 1001
49 C.F.R. part 31

Applicability to Contracts

The Program Fraud clause applies to all third party contracts that are federally funded.

Flow Down

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Model Clause/Language

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Program Fraud and False or Fraudulent Statements or Related Acts

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

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

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

PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENTS

49 U.S.C. § 5333(b) (“13(c)”)
29 C.F.R. part 215

Applicability to Contracts

The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

Flow Down

The employee protective arrangements clause flows down to all third party contractors and their contracts at every tier.

Model Clause/Language

There is no required language for the Public Transportation Employee Protective Arrangements clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Public Transportation Employee Protective Arrangements

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

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

RECYCLED PRODUCTS

42 U.S.C. § 6962
40 C.F.R. part 247
2 C.F.R. part § 200.322

Applicability to Contracts

The Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 *et seq.*), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

Flow Down

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Model Clause/Language

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402
Executive Order No. 13043
Executive Order No. 13513
U.S. DOT Order No. 3902.10

Applicability to Contracts

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

Flow Down Requirements

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

Model Clause/Language

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or CARTA.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by

distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

SCHOOL BUS OPERATIONS

49 U.S.C. 5323(f)
49 C.F.R. part 605

Applicability to Contracts

The School Bus requirements apply to contracts for operating public transportation service.

Flow Down Requirements

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

Model Clause/Language

The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.

School Bus Operations

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

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

If Contractor violates this School Bus Agreement, FTA may:

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

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

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

SEISMIC SAFETY

42 U.S.C. 7701 *et seq.*
49 C.F.R. part 41
Executive Order (E.O.) 12699

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

Model Clauses/Language

The regulations do not provide suggested language for third party contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

Seismic Safety

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

SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331
49 C.F.R. part 655
49 C.F.R. part 40

Applicability to Contracts

Third party contractors who perform *safety-sensitive functions* must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, *safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

Flow Down Requirements

The Substance Abuse requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

Model Clause/Language

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Option 1

The recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 C.F.R. part 655. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option for only those recipients that have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Option 2

The recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Option 3

The recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

SUBSTANCE ABUSE TESTING

Option 1

The Contractor agrees to participate in AGENCY's drug and alcohol program established in compliance with 49 C.F.R. part 655.

SUBSTANCE ABUSE TESTING Option 2

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or CARTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

SUBSTANCE ABUSE TESTING Option 3

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or CARTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before [insert date] and to submit the Management Information System (MIS) reports before [insert date before March 15] to [insert title and address of person responsible for receiving information]. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before [insert date or upon request] a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt [insert title of the Policy Statement the recipient wishes the contractor to use] as its policy statement as required under 49 C.F.R. part 655; OR (c) submit for review and approval before [insert date or upon request] a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: [to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium].

TERMINATION

2 C.F.R. § 200.339

2 C.F.R. part 200, Appendix II (B)

Applicability to Contracts

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

Flow Down

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

Model Clause/Language

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

Termination for Convenience (General Provision)

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

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

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the CARTA may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the CARTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the CARTA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

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

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

Waiver of Remedies for any Breach

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

Termination for Convenience (Professional or Transit Service Contracts)

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

Termination for Default (Supplies and Service)

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

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

Termination for Default (Transportation Services)

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

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

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

Termination for Default (Construction)

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

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

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of CARTA, acts of another contractor in the performance of a contract with CARTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies CARTA in writing of the causes of delay. If, in the judgment of CARTA, the delay is excusable, the time for completing the work shall be extended. The judgment of CARTA shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of CARTA.

Termination for Convenience or Default (Architect and Engineering)

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

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

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

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

Termination for Convenience or Default (Cost-Type Contracts)

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

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

to the time of termination.

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

VIOLATION AND BREACH OF CONTRACT

2 C.F.R. § 200.326

2 C.F.R. part 200, Appendix II (A)

Applicability to Contracts

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Flow Down

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

Rights and Remedies of the CARTA

The CARTA shall have the following rights in the event that the CARTA deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages.

For purposes of this Contract, breach shall include... [Refer to CARTA for definition].

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the CARTA, the Contractor expressly agrees that no default, act or omission of the CARTA shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the CARTA directs Contractor to do so) or to suspend or abandon performance.

Remedies

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the CARTA will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the CARTA takes action contemplated herein,

the CARTA will provide the Contractor with sixty (60) days written notice that the CARTA considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

Disputes

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of CARTA's [title of employee]. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

- **Example 2:** The CARTA and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the CARTA and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court de novo and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the CARTA's direction or decisions made thereof.

Performance during Dispute

Unless otherwise directed by CARTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

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

Remedies

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

Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available

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

Appendix B – Definitions

As used in this document

ADA Americans with Disabilities Act, 42 U.S.C. 1210 et. seq., and corresponding regulations promulgated at 49 CFR Part 37 and 38, as amended.

CARTA's Existing Equipment shall include items on the asset list provided to the service contractor at the date of contract execution

Contracting Officer means the Executive Director of CARTA. The Executive Director may authorize a designee (or designees) of CARTA to carry out one or more of the functions of the Contracting Officer herein, provided that such authority is set forth in writing with a copy thereof forwarded to Contractor.

Contract Amendment means any written amendment made to this Contract entered into by the parties.

Customer Complaint means each separate substantive customer complaint including oral and written complaints, whether received initially by Contractor, CARTA or a third party as determined in CARTA's sole discretion. The same customer complaint from the same customer shall not be counted as a separate Customer Complaint.

DMV means South Carolina Department of Motor Vehicles.

Days means business days recognized by CARTA.

DBE means Disadvantaged Business Enterprise Certified under the current South Carolina Department of Transportation State Unified Certification Program.

Dispatch means the function of assigning revenue vehicles and operators to cover scheduled transit trips.

Equipment Initial Inventory shall include items on the asset list provided to the service contractor at the date of contract execution.

Estimated Annual Service Hours shall be adjusted each year at CARTA's discretion.

Facility means the CARTA facility located at 3664 Leeds Avenue, Charleston, South Carolina, and Intermodal Transportation Center as described as the "Premises" in the Lease including the structure, fixtures, and equipment provided by CARTA.

Federal Transit Administration or *FTA* refers to the Federal Transit Administration of the United States Department of Transportation, or its successor entity.

Fixed Route Schedule means the listing of specific locations and corresponding times that a Revenue Vehicle is expected to depart those locations as adopted by CARTA from time to time as specified on <http://www.ridecarta.com/riding-carta/routesmapsschedules/routes-schedules>

Route descriptions;

Hours of service, including span, frequency, and days per week of operation; and

Revenue hours and miles and number of buses assigned.

Fixed Route Service Hours means the period of time that a Revenue Vehicle is engaged in Fixed Route System or other service requested by CARTA, which begins upon said Revenue Vehicle's pullout from the Facility and ends upon said Revenue Vehicle's return to the Facility, excluding dead time, lunchbreaks, and breaks between run splits.

Fixed Route System means CARTA's fixed route bus service as established from time to time by CARTA.

Missed Trip means the failure of a Revenue Vehicle to provide revenue service at a specified stop within the time specified in the Schedule.

On-time Performance means the operation of a Revenue Vehicle in compliance with the Schedules.

Passenger Eligible shall mean a Tel-A-Ride passenger that has a current eligibility determination in accordance with CARTA's Paratransit Policy and a valid identification card showing such determination or is using Tel-A-Ride to obtain his identification card.

Revenue Vehicle means any vehicle utilized to provide fixed route (or special) bus services for CARTA hereunder excluding Support Vehicles.

Schedule means the Fixed Route Schedule and the Tel-A-Ride Schedule.

Service Area presently consists of approximately one hundred thirty seven (137) square miles. Current Tel-A-Ride service operates in peninsular Charleston, West Ashley, Mt. Pleasant, James Island, North Charleston, Isle of Palms, Sullivan's Island, and a limited portion of Hanahan. Locations with the following zip codes are eligible for inclusion in the Tel-A-Ride Service Area.

29401	29403	29405	29406	29407	29412
29414	29418	29420	29423	29429	29445
29451	29455	29456	29464	29466	29482
29492					

The Service Area includes the three quarter ($\frac{3}{4}$) mile corridor on either side of any fixed route, including any new fixed routes CARTA establishes in the future. Trips outside of the $\frac{3}{4}$ mile limit may be made at the CARTA's request, on a limited basis.

We provide service outside the $\frac{3}{4}$ with a limited number of customers on a special exception by the CARTA.

Service Hours means the Fixed Route Service Hours plus the Tel-A-Ride Service Hours.

Support Vehicle means any vehicle needed to support the operation and maintenance of the Fixed Route and Tel-A-Ride System provided in accordance with this Contract including, but not limited to cars, vans, tow trucks, lift equipment vans, and service trucks.

Tel-A-Ride Schedule means the listing of specific locations within the Service Area and corresponding times that a Revenue Vehicle is expected to pick up a passenger as adopted by Contractor according to reservations set by Tel-A-Ride System Eligible Passengers.

Tel-A-Ride Service Hours means the period of time that a Revenue Vehicle is engaged in Tel-A-Ride System or other service requested by CARTA, which begins upon said Revenue Vehicle's pullout from the Facility and ends upon said Revenue Vehicle's return to the Facility, excluding deadtime, lunchbreaks, and breaks between run splits

Tel-A-Ride System means CARTA's paratransit bus service as established from time to time by CARTA which shall operate with curb-to curb service in a $\frac{3}{4}$ mile corridor on either side of all Fixed Route System lines.

Vehicle means any Revenue Vehicle or Support Vehicle.

POLICY TO PROMOTE SAFE AND EFFICIENT TRANSIT

Prohibition on Certain Activities on CARTA Buses, Within CARTA Facilities, and at CARTA Bus-Stops

CARTA's primary purpose is to facilitate safe and efficient travel for members of the public within its service area. It wishes to keep passengers, bus operators, and staff safe, and its vehicles and equipment protected from damage and fully operational. CARTA has no intent to designate its buses, facilities, or bus stops as a place for expressive conduct or solicitation.

Accordingly, the following activities are prohibited on all CARTA buses, within CARTA facilities, and within fifty (50) feet of CARTA bus-stops:

1. The distribution of signs, advertisements, circulars, petitions, leaflets, buttons, stickers, handbills, or other printed or written materials, including but not limited to, materials related to political, commercial, social or religious causes.
2. Protests, marches or sit-ins.
3. The registration of voters or collection of signatures for political petitions, referenda or signature drives.
4. The sale, promotion, or distribution of any products or goods
5. The sale, promotion, or provision of any commercial services.
6. The solicitation of funds, including any panhandling.
7. Conduct or speech that restricts reasonable access to or from CARTA buses, facilities, or bus-stops.
8. Conduct or speech that falsely misrepresents a person as an employee, agent, representative, affiliate, or endorsed-speaker on behalf of CARTA.

Violations of this policy may result in CARTA refusing service or access to its buses, facilities or bus-stops or taking other action permitted under applicable law, including seeking arrests and prosecutions. This policy shall apply equally to actual violators and anyone who aids or abets someone else in violating the policy.

This policy shall not preclude:

1. Events sponsored by CARTA which are for the benefit of CARTA's employees, customers, Board members, service provider, or the public at large.
2. Events sponsored by CARTA or one of its member jurisdictions that are part of, or constitute, an advertising campaign designed to promote CARTA or its services, raise money for CARTA, promote public awareness about CARTA, or benefit CARTA's ridership.
3. Peaceful public speaking, demonstrations, or distribution of written materials in its Park and Ride lots so long as the participants clearly identify that they are not an employee, agent, representative, affiliate, or endorsed-speaker on behalf of CARTA and do not:
 - a. engage in illegal behavior
 - b. jeopardize public or individual safety or health
 - c. create a reasonable apprehension of imminent physical harm

- d. interfere with the provision of transit service
- e. restrict public access to CARTA buses, facilities or bus-stops
- f. damage, deface, or alter CARTA buses, equipment or property
- g. post any signs, advertisements, circulars, petitions, leaflets, buttons, stickers, handbills, or other printed or written materials on vehicles parked in such lots
- h. post or adhere any signs, advertisements, circulars, petitions, leaflets, buttons, stickers, handbills, or other printed or written materials to any CARTA bus, facility or bus-stop or leave such materials unattended
- i. disregard any sign intended to provide for the safety, security, or transit of CARTA passengers.

CARTA

Charleston Area Regional Transportation Authority

MEMORANDUM

TO: CARTA Board Members
FROM: Andrea Kozloski, Deputy Director of Operations and Support
DATE: August 4, 2017
SUBJECT: Tel-A-Ride Paratransit Service Riders Guide Amendment

As a result of CARTA's Triennial Review, we are requesting the following amendments be made to the Tel-A-Ride Paratransit Service Riders Guide:

- Page 7, Item #2 – Added language to clarify the two-step process for eligibility. This item address step 1, determining an individual's medical eligibility for the service.
- Page 8, Item #10 – Administrative correction to change reservation hours to 8:30am-5pm.
- Page 8, Item #13 – Added language to clarify determining eligibility for pick-up at their home.
- Page 9, Item #20 – Added language to clarify when suspensions will occur.
- Page 10, Item #28 – Replaced language regarding visitor's policy to include the 21-day policy as well as the 365 period.
- Page 10, Item #30 - Added language to clarify when suspensions will occur.
- Page 18, Item #2 - Administrative correction to change reservation hours to 8:30am-5pm.
- Page 21, Item #3 – Added language to clearly define excessively long trips.
- Page 22, Door to Door or Curb to Curb statement – Added language to state our reasonable modification statement.
- Page 27, Item #3 – Added language to state that the policy applies to all scheduled trips.
- Page 28, Item #4 - Added language to clarify when suspensions will occur.

Please feel free to contact me with any questions or for further information.



CHARLESTON AREA REGIONAL TRANSPORTATION AUTHORITY

MEMORANDUM

TO: Board of Directors

FROM: Robin W. Mitchum, Deputy Director of Finance & Administration *RM*

SUBJECT: Revised Procurement Policies & Procedures

DATE: August 9, 2017

Please find attached the Proposed revisions to the Procurement Policies and Procedures. During the Financial Management Oversight and Triennial Review, the consultants and the Federal Transit Administration (FTA) found several elements missing from the agencies Procurement Policies and Procedures.

The document is a mark-up of requested and/or proposed changes based on FTA Circular 4220.1F. This document gives guidance to staff on requirements for purchasing and contracting on behalf of CARTA.

Once approved by the CARTA Board, the document will be forwarded to FTA Region IV for final concurrence.

If you have any questions, please contact me at 843-529-0400 ext. 213 or robinm@bcdco.com.



**CHARLESTON AREA REGIONAL TRANSPORTATION AUTHORITY
(CARTA)**

PROCUREMENT POLICIES AND PROCEDURES MANUAL

AUGUST 2017

The following Procurement Policies and Procedures have been reviewed and approved by the CARTA Board of Directors at their regularly scheduled meeting on August 16, 2017.

Formatted: Left

Prepared By: _____

Reviewed By: _____

Approved By: _____

PROCUREMENT POLICIES AND PROCEDURES MANUAL

TABLE OF CONTENTS

Section 1. GENERAL

Sec. 1.1.	Purpose	1
Sec. 1.2.	Applicability of Manual.....	1
Sec. 1.3.	Definitions.....	1
Sec. 1.4.	Public Access to Procurement Information.....	3
Sec. 1.5.	Compliance With Procurement Requirements	3

Section 2. ORGANIZATION

Sec. 2.1.	Procurement and Contracts Administrator--Position Created; Appointment.	3
Sec. 2.2.	Procurement and Contracts Administrator--Authority; Duties.	4
Sec. 2.3.	Procurement and Contracts Administrator--Delegation of Authority.	4
Sec. 2.4.	Centralization of Authority.	5
Sec. 2.5.	Advisory Groups.	5
Sec. 2.6.	Authority Attorney to Provide Legal Services to Procurement and Contracts Administrator.....	5
Sec. 2.3	Organizational Conflicts of Interest.....	5
Sec. 2.7.	Signature Authority Levels.....	5

Section 3. SOURCE SELECTION AND CONTRACT FORMATION

Sec. 3.1.	General Policies.	6
Sec. 3.2.	Definitions.....	6-7
Sec. 3.2.A	Federally Required Third Party Contract Clauses	8-7
Sec. 3.2.B	Federally Required Certifications, Reports & Forms.....	9-10
Sec. 3.2.C	Applicability of Third Party Contract Clauses	11-12
Sec. 3.2.D	Forms and Documentation to Support Procurement Process	11-12
Sec. 3.3.	Competition.....	14
Sec. 3.4.	Methods of Source Selection.	15
Sec. 3.5.	Source Selection and Contract Approval by	15-16
Sec. 3.6.	Competitive Sealed Bidding.	15-16
Sec. 3.7.	Micro-Purchases.....	19-20
Sec. 3.8.	Small Purchases.....	20-21
Sec. 3.9.	Competitive Sealed Proposals	22-23
Sec. 3.10.	Sole Source Procurement.	23-24
Sec. 3.11.	Emergency Procurement.....	24-25
Sec. 3.12.	Cancellation of Invitation For Bids or Requests For Proposals.	26

Sec. 3.13.	Responsibility of Bidders and Offerors	<u>2627</u>
Sec. 3.14.	Bid Security and Bonds	<u>2728</u>
Sec. 3.15.	Prequalification of Suppliers	<u>2728</u>
Sec. 3.16.	Cost/Price Analysis	<u>2829</u>
Sec. 3.17.	Cost or Price Data.....	<u>3031</u>
Sec. 3.18.	Types of Contracts Generally.....	<u>3233</u>
Sec. 3.19.	Multiterm Contracts	<u>3233</u>
Sec. 3.20.	Revenue Contracts.....	<u>3536</u>
Sec. 3.21.	Leases.....	<u>3536</u>
Sec. 3.22.	Option Provisions	<u>3637</u>
Sec. 3.23.	Maintenance contracts	<u>3637</u>
Sec. 3.24.	Right of Inspection	<u>3637</u>
Sec. 3.25.	Auditing	<u>3738</u>
Sec. 3.26.	Records	<u>3839</u>
Sec. 3.27.	Contract Monitoring and Closeout Procedures	<u>3940</u>
Sec. 3.28.	Contract Provisions	<u>4041</u>
Sec. 3.29.	Contract Award Announcement	<u>4243</u>
Sec. 3.30.	Rolling Stock	<u>4243</u>

Section 4. SPECIFICATIONS

Sec. 4.1.	Definitions.....	<u>4344</u>
Sec. 4.2.	Duties of the Procurement and Contracts Administrator.....	<u>4344</u>
Sec. 4.3.	Maximum Practicable Competition.....	<u>4546</u>
Sec. 4.4.	Payment Provisions in Third Party Contracts	<u>4647</u>

Section 5. CONSTRUCTION, ARCHITECT-ENGINEER, LAND SURVEYING & OTHER PROFESSIONAL SERVICES

Sec. 5.1.	Definitions.....	<u>4647</u>
Sec. 5.2.	Selection of Method of Construction Contract Management	<u>4748</u>
Sec. 5.3.	Bid Security for Construction Contracts.....	<u>4849</u>
Sec. 5.4.	Construction Contract Performance and Payment Bonds--Generally..	<u>4950</u>
Sec. 5.5.	Construction Contract Performance & Payment Bonds / Forms; Certified Copies.....	<u>5051</u>
Sec. 5.6.	Contract Clauses	<u>5051</u>
Sec. 5.7.	Approval of Construction Contract Modifications, Change Orders, Price Adjustment.....	<u>525</u>
	<u>3</u>	
Sec. 5.8.	Architect-engineer, Land Surveying and Other Professional Services	<u>5455</u>
Sec. 5.9	Design-Bid-Build Construction Process	<u>5658</u>
Sec. 5.10	Design-Build Construction Process	<u>5759</u>

Section 6. SUPPLY MANAGEMENT

Sec. 6.1.	Definitions.....	<u>5860</u>
-----------	------------------	-------------

Sec. 6.2.	Management of Supplies	<u>5961</u>
-----------	------------------------------	-------------

Section 7. LEGAL AND CONTRACTUAL REMEDIES

Sec. 7.1.	Protest Procedures and Remedies Regarding Protested Solicitations and Awards.....	<u>61</u>
	<u>63</u>	
Sec. 7.2.	Debarment or Suspension.....	<u>6264</u>
Sec. 7.3.	Resolution of Contract Controversies.....	<u>6466</u>
Sec. 7.4.	Solicitations or Awards in Violation of Law.....	<u>6567</u>
Sec. 7.5.	Procurement Appeals Board.....	<u>6668</u>
Sec. 7.6.	Protests to Federal Transit Authority.	<u>6869</u>

Section 8. INTERGOVERNMENTAL RELATIONS

Sec. 8.1.	Definitions	<u>6971</u>
Sec. 8.2.	Cooperative Purchasing Authorized.	<u>6971</u>
Sec. 8.3.	Sale, Acquisition or Use of Supplies.....	<u>6972</u>
Sec. 8.4.	Cooperative Use of Supplies or Services.....	<u>7072</u>
Sec. 8.5.	Joint Use of Facilities.	<u>7072</u>
Sec. 8.6.	Use of State Contracts.....	<u>7072</u>

Section 9. ETHICS

Sec. 9.1.	Standards of Conduct.....	<u>7072</u>
Sec. 9.1.a	Personal Conflicts of Interest.....	72
Sec. 9.1.b	Gifts.....	73
Sec. 9.1.c	Violations.....	73
Sec. 9.2.	Federal Procurements.....	70

APPENDIX-A	Required Third Party Contract Clauses.....	A.1
APPENDIX-B	Required Certifications, Reports, and Forms.....	B.1
	Required Model Clauses & Other Required Forms.....	B.2
APPENDIX-C	Applicability of Third Party Contract Clauses.....	C.1
APPENDIX-D	Index of Procurement Checklists & Forms.....	D.1
APPENDIX-E	FTA Master Agreement.....	E.1
APPENDIX-FE	—Circular 4220.1F.....	FE.1
APPENDIX-F	Procurement Checklist	
APPENDIX-G	Procurement File Checklist	

PROCUREMENT POLICIES AND PROCEDURES MANUAL

SECTION 1. GENERAL

Sec. 1.1. Purpose.

The purpose of this manual is to provide policies and procedures for the fair and equitable treatment of all persons involved in public purchasing by CARTA.

Sec. 1.2. Applicability of Manual.

~~This manual applies to contracts to~~To insure the most efficient and economic procurement of supplies, services, and construction. It shall apply to every expenditure of public funds irrespective of their source, except as provided herein. Nothing in this manual shall prevent CARTA from complying with the terms and conditions of any grant, gift or request which is otherwise consistent with law.

Sec. 1.3. Definitions.

The following words, terms and phrases, when used in this manual, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

CARTA shall mean the Charleston Area Regional Transportation Authority.

Business shall mean any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change order (unilateral) shall mean a written order signed and unilaterally issued by the Procurement and Contracts Administrator, directing the contractor to make changes which the "changes" clause of the contract authorizes the Procurement and Contracts Administrator to order without the consent of the contractor.

Construction shall mean the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operations, routine repair, or routine maintenance of existing structures, buildings or real property.

Contract shall mean all types of Authority agreements, regardless of what they may be called, for the procurement of supplies, services or construction.

Contract modification shall mean any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other

provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor shall mean any person having a contract with CARTA.

Data shall mean recorded information, regardless of form or characteristic.

Days shall mean calendar days.

Designee shall mean a duly authorized representative of a person holding a superior position.

Employee shall mean an individual drawing a salary from CARTA, whether elected or not, and any noncompensated individual performing personal services for CARTA.

FTA shall mean the Federal Transit Administration.

Grant shall mean the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction. A contract resulting from such an award is not a grant but a procurement contract.

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

Service shall mean the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

Supplies shall mean all property including but not limited to equipment, materials, printing, insurance, information technology equipment and software packages, and leases of real property, excluding land or a permanent interest in land.

Using Agency shall mean any body of CARTA which utilizes any supplies,

services, or construction procured under this manual.

Sec. 1.4. Public Access to Procurement Information.

Procurement information shall be a public record to the extent required by Chapter 3 of Title 30 (The Freedom of Information Act), of the South Carolina Code of Laws, 1976, with the exception that commercial or financial information obtained in response to a request for bids or request for proposals, which is privileged and confidential, not be disclosed. Bidders or offerors must clearly mark as "CONFIDENTIAL" each part of their bid or proposal which they consider to be proprietary information that could be exempt from disclosure under Section 30-4-40, Code of Laws of South Carolina, 1986, as amended, (the South Carolina Freedom of Information Act). If any part is designated as confidential, there must be attached to that part an explanation of how this information fits within one or more categories of matters exempt from disclosure set forth in Section 30-4-40. CARTA reserves the right to determine whether the information should be exempt from disclosure. No action may be brought against CARTA or its agents for its determination in this regard. Additionally, prior to bid opening, the identity and number of bids or proposals received shall be made available only to Authority employees, and then only on a "need-to-know" basis.

Sec. 1.5. Compliance With Procurement Requirements.

CARTA will abide by all applicable federal, state and local guidelines which govern procurement. When a procurement involves the expenditure of federal funds, the procurement shall comply with such federal law and authorized regulations which are mandatorily applicable. The FTA provides guidance relating to procurement in its various publications, including FTA's Third Party Contracting Guidelines

Any provision in this manual may be waived or rescinded in order to comply with any federal requirements for the procurement.

SECTION 2. ORGANIZATION

Sec. 2.1. Procurement ~~and Contract Administrator Officer--Position Created;~~ Appointment.

~~(a) Position created. There is hereby created the position of Procurement Officer, who shall be the Authority CARTA's principal public procurement official. The Procurement Officer shall report to the Executive Director or his/her designee.~~

Formatted: Indent: First line: 0"

~~(b) Selection. The selection of the Procurement Officer shall be made by the Authority Board. CARTA uses services provided by BCD Council of Governments.~~

Formatted: Indent: First line: 0"

Sec. 2.2. Procurement ~~and Contract Administrator~~ Officer--Authority; Duties.

~~(a) Principal public procurement official. The Procurement Officer shall serve as the principal public procurement official of the Authority, and shall be responsible for the procurement of supplies, services, and construction in accordance with this manual, as well as the management and disposal of supplies.~~

~~(b)~~ Duties. In accordance with this manual, the Procurement and Contract Administrator ~~Officer~~ shall:

(1) Procure ~~or supervise the procurement of~~ all supplies, services, and construction needed by ~~the Authority~~ CARTA;

~~(2) Exercise general supervision and control over all inventories and supplies belonging to the Authority;~~

~~(3) Sell, trade, or otherwise dispose of surplus supplies belonging to the Authority; and~~

~~(4)~~ Establish and maintain programs for the inspection, testing, and acceptance of supplies, services and construction.

~~(5)~~ Review proposed procurements to avoid purchase of unnecessary or duplicative items. Considerations should be given to consolidating or breaking out procurements to obtain a more economical purchase.

~~(6)~~ Draft specifications, evaluate contracts, and perform internal audits as necessary for CARTA's procurement of goods or services.

~~c) Operational procedures. Consistent with this manual, the Procurement Officer with the consent of the Executive Director and the Authority Board may adopt operational procedures relating to the execution of his/her duties.~~

Sec. 2.3. Procurement Officer--Delegation of Authority.

~~The Procurement Officer may delegate authority to designees of the Authority. Where appropriate, the Procurement Officer, with the approval of the Authority Board, may hire consultants to assist with any procurement duties.~~

Sec. 2.4. Centralization of Authority.

~~Except as otherwise provided in this manual, the authority relating to the~~

~~procurement of all supplies, services, and construction for the Authority is hereby vested in the Procurement Officer as provided in this manual.~~

~~**Sec. 2.5. Advisory Groups.**~~

~~The Procurement Officer may appoint procurement advisory groups to assist with respect to specifications or procurement in specified areas, and with respect to any other matters within the authority of the Procurement Officer.~~

~~**Sec. 2.6. Authority Attorney to Provide Legal Services to Procurement Officer.**~~

~~The Authority attorney, or such attorney as the Authority Board may designate, shall serve as legal counsel and provide necessary legal services to the Procurement Officer.~~

Sec. 2.3 Organizational Conflict of Interest.

Engaging in practices that result in organizational conflicts of interest as prohibited.

1. Occurrence. An organizational conflict of interest occurs when any of the following circumstances arises:

a. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advise to CARTA due to other activities, relationships, contracts, or circumstances.

b. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

c. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

2. Remedies. Procurement and Contracts Administrator will analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

Sec. 2.74. Signature Authority Levels.

- Formatted: Indent: Hanging: 0.13"
- Formatted: Font: Not Bold
- Formatted: Font: Not Bold
- Formatted: Font: Not Bold
- Formatted: Font: Not Bold, Underline
- Formatted: Indent: Left: 1", Hanging: 0.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"
- Formatted: Underline
- Formatted: Font: Not Bold, Underline
- Formatted: Indent: First line: 0"
- Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.5" + Indent at: 1.75"
- Formatted: Underline
- Formatted: Indent: First line: 0"
- Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.5" + Indent at: 1.75"
- Formatted: List Paragraph, Left, No bullets or numbering, Tab stops: Not at 0" + 0.5" + 1" + 1.5" + 2" + 2.5" + 3" + 3.5" + 4" + 4.5" + 5" + 5.5" + 6" + 6.5"
- Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 1.5" + Indent at: 1.75"
- Formatted: List Paragraph, Left, No bullets or numbering, Tab stops: Not at 0" + 0.5" + 1" + 1.5" + 2" + 2.5" + 3" + 3.5" + 4" + 4.5" + 5" + 5.5" + 6" + 6.5"
- Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"
- Formatted: No underline

Although prepared by the Procurement and Contract Administrator, the following procurement documents should be reviewed and approved by signature at the following levels after review of necessary procurement justification documents:

1) Purchase Requisitions:

- Budget Approval by the Deputy Director of Finance and Administration
- Project Approval by the Executive Director

2) Purchase Orders:

- ~~Purchase Approval by the Executive Director~~ Signed by Procurement and Contract Administrator

~~3) Board Renewal Requests:~~

- ~~— Legal Approval by Corporation Counsel, if appropriate~~
- ~~— Budget Approval by the Financial Administrator~~
- ~~— Project Approval by the Executive Director~~

~~4)3) _____ Contracts:~~

- Contract Execution after ~~receipt of~~ Board Approval ~~should will~~ be executed ~~on CARTA's behalf~~ by the ~~Chairman of the Board~~ Executive Director

~~5)4) _____ Changes Orders:~~

- any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, when the modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed \$10,000 must be reviewed for documentation of justification by the Procurement and Contracts Administrator
- Reviewed for Budget ~~Approval~~ Approved by the ~~Financial Administrator~~ Deputy Director of Finance and Administration
- Reviewed for ~~Approval~~ Approved by the ~~CARTA Board~~ Executive Director
- ~~— Approval of acceptance by the Chairman of the Board~~

SECTION 3. SOURCE SELECTION AND CONTRACT FORMATION

Sec. 3.1. General Policies.

CARTA and responsibility for the purchase and sale of all property and

services rests with the ~~Procurement Officer subject to approval in some instances by the Executive Director and/or the Authority Board.~~ All purchases for goods or services are to be initiated by a purchase requisition ~~completed by an Project Manager,~~ approved by the ~~Procurement Officer, the Executive Director and,~~ for purchases exceeding \$25,000.00, the ~~Authority Board.~~

The Procurement and Contracts Administrator is responsible for ensuring the necessity of any property or services obtained in whole or in part by federal funds. Circular 4220.1F, Chapter III, §3, requires adherence adhere to The Common Grant Rules which requires the recipient to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State, and local responsibilities.

Sec. 3.2. Definitions

The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cost-reimbursement contract shall mean a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this manual, and a fee, if any.

Established catalogue price shall mean the price included in a catalogue, price list, schedule, or other form that:

- (1) Is regularly maintained by a manufacturer or contractor;
- (2) Is either published or otherwise available for inspection by customers; and
- (3) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

Invitation for bids shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Purchase description shall mean the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to or made a part of the solicitation.

Request for proposals shall mean all documents whether attached or incorporated by reference utilized for soliciting proposals.

Responsive bidder shall mean a person who has submitted a bid which conforms in all material respects to the invitation for bids.

Sec. 3.2.A Federally Required Third Party Contract Clauses (Appendix-A)
Required for all FTA Assisted contracts:

- 1) No Federal Government Obligations to Third Parties (by use of Disclaimer). FTA Master Agreement §2.f.
- 2) False or Fraudulent Statements or Claims – Civil and Criminal Fraud. FTA Master Agreement §3.f.
- 3) Access to Third Party Contract Records. FTA Master Agreement §15.t.
- 4) Changes to Federal Requirements. FTA Master Agreement §2.c.(1).
- 5) Termination (Contracts > \$10,000 per 49 CFR Part 18). FTA Master Agreement §11.
- 6) Civil Rights (Title VI, EEO, ADA). FTA Master Agreement §12.
- 7) Disadvantaged Business Enterprises (DBE). FTA Master Agreement §12.d.
- 8) Incorporation of FTA Terms. FTA Master Agreement §15.a.
- 9) Suspension & Debarment (Awards exceeding \$25,000). FTA Master Agreement §3.b.

Formatted: Font: 10 pt

Required for all FTA assisted contracts which exceed the Simplified Acquisition Threshold (\$100,000):

- 1) Buy America. FTA Master Agreement §14.a.
- 2) Resolution of Disputes, Breaches, or Other Litigation. FTA Master Agreement §5~~6~~2.
- 3) Lobbying (Awards Exceeding \$100,000 by Statute). FTA Master Agreement §3.d.
- 4) Clean Air (Awards Exceeding \$100,000 by Statute). FTA Master Agreement §25.b.

- 5) Clean Water (Awards Exceeding \$100,000 by Statute). FTA Master Agreement §25.c.

Required for the transport of property or person:

- 1) Cargo Preference. FTA Master Agreement §14.b.
- 2) Fly America. FTA Master Agreement §14.c.

Required for Construction Activities:

- 1) Davis-Bacon / Construction Employee Protections (contracts \geq \$2,000). FTA Master Agreement §24.a.(1)
- 2) Contract Work Hours & Safety Standards Act / Construction Employee Protections (contracts \geq \$100,000). FTA Master Agreement §24.a.(2)~~b.~~
- 3) Copeland Anti-Kickback Act / Construction Employee Protections (ALL contracts), FTA Master Agreement §24.a.(3)
- 4) Bonding for Construction Activities > \$100,000. FTA Master Agreement §15.o(1).
 - i. Bid Guarantee Bond – 5%
 - ii. Performance Bond – 100%
 - iii. Payment Bond
 - 50% for contracts < \$1 million
 - 40% for contracts \$1 million - \leq \$5 million
 - \$2.5 million for contracts > \$5 million
- 5) Seismic Safety (construction contracts for new buildings or existing buildings). FTA Master Agreement §23.e.

Required for Non-Construction Activities:

- 1) Contract Work Hours & Safety Standards Act (for all turnkey, rolling stock, and operations contracts > \$100,000 – EXCLUDING transportation services contracts). FTA Master Agreement §24.b.

Required for Transit Operations:

- 1) Transit Employee Protective Arrangements. FTA Master Agreement §24.d.
- 2) Charter Bus Operations. FTA Master Agreement §28
- 3) School Bus Operations. FTA Master Agreement §29

Formatted: No bullets or numbering

| +

| ~~2)4)~~ Drug Use & Testing (Safety Sensitive Functions). FTA Master Agreement §32.b.

| ~~3)5)~~ Alcohol Misuse & Testing(Safety Sensitive Functions). FTA Master Agreement §32.b.

Required for Planning, Research, Development & Demonstration Projects:

- 1) Patent Rights. FTA Master Agreement § 17.
- 2) Rights in Data & Copyrights. FTA Master Agreement § 18.

Miscellaneous Special Requirements:

- 1) Energy Conservation. FTA Master Agreement §26.
- 2) Recycled Products (Contracts when annually procuring ≥ \$10,000 of items designated by EPA). FTA Master Agreement § 15.k.
- 3) Conformance with National ITS Architecture (Contracts & solicitations for ITS projects). FTA Master Agreement § 15.m.
- 4) ADA Access (contracts for rolling stock or facilities construction/renovation). FTA Master Agreement § 12.g.
- 5) Assignability Clause (procurements through assignments). FTA Master Agreement § 15.a.

Sec. 3.2.B Federally Required Certifications, Reports & Forms (Appendix-B)

During the process of procurement, it will become necessary to consistently and recognizably document specific federal procurement procedures via certifications, reports and/or (recommended) forms, including, but not exclusive to:

- 1) Bus Testing Certification: all procurements of new model transit buses and modified mass produced vans and existing models being modified with a major changeover changes. ~~FTA Master Agreement § 15.n.(4)~~ 49 CFR Part 665.
- 2) TVM Certification: all rolling stock procurements. ~~FTA Master Agreement § 12.d(1)~~ 49 CFR Part 26
- 3) Buy America Certification: procurements of steel, iron or manufactured

- products exceeding \$100,000. ~~FTA Master Agreement §14.a, 49 CFR Part 661~~
- 4) Pre-Award Review: ~~rolling stock procurements exceeding \$100,000. FTA Master Agreement §15.n(3). FTA Annual Certification for any rolling stock procurement. 49CFR Part 663~~
 - 5) Pre-Award Buy America Certification: rolling stock procurements exceeding \$100,000. ~~FTA Master Agreement §15.n(3) 49 CFR Part 663.~~
 - 6) Pre-Award Purchaser's Requirement: all rolling stock procurements ~~exceeding \$100,000. FTA Master Agreement §15.n(3) 49 CFR Part 663.~~
 - 7) Post Delivery Review: FTA Annual Certification for any rolling stock procurement~~rolling stock procurements exceeding \$100,000. FTA Master Agreement §15.n(3). 49 CFR Part 663~~
 - 8) Post Delivery Buy America Certification: rolling stock procurements exceeding \$100,000. ~~FTA Master Agreement §15.n(3) 49 CFR Part 663.~~
 - 9) Post Delivery Purchaser's Requirement: all rolling stock procurements to the extent required by Federal law and regulations~~exceeding \$100,000. FTA Master Agreement §15.n(3) 49 CFR Part 663.~~
 - 10) On-Site Inspector's Report: rolling stock procurement of for ≥ ten (10) or fewer vehicles. Any amount of primary manufactured standard production an unmodified vans after visual inspection and road testing meet the contract specifications.~~FTA Master Agreement §15.n(3) 49CFR Part 663.~~
 - 11) Federal Motor Vehicles Safety Standards Pre-Award & Post-Delivery: Motor vehicle procurements (49 CFR 571). ~~FTA Master Agreement §15.n(3) 49 CFR Part 663.~~
 - 12) Lobbying: Procurements exceeding \$100,000. ~~FTA Master Agreement §3.d(1) 49 CFR Part 20.~~
 - 13) Standard Form LLL & Quarterly Updates (when required): Procurements exceeding \$100,000 where contractor engages in lobbying activities. ~~FTA Master Agreement §3.d(1) 49 CFR Part 20.~~
 - 14) Contract Administration System. ~~FTA Master Agreement §7.b 49 CFR § 18.36(b)(2) and/or 49 CFR § 19.47.~~

- 15) Record of Procurement History. ~~FTA Master Agreement §7.i~~ 49 CFR § 18.36(b)(9) and/or 49 CFR § 19.47.
- 16) Protest Procedures. ~~FTA Master Agreement §7.i~~ 49 CFR § 18.36(b)(12).
- 17) Selection Procedures. ~~FTA Master Agreement §8.e.~~ 49 CFR § 18.36(c)(3)
- 18) Cost/Price Analysis. 49 CFR § 18.36(f) and/or 49 CFR § 19.45 ~~FTA Master Agreement §10.a-b.~~
- 19) Justification for Non-Competitive Awards, if applicable. ~~FTA Master Agreement §9.h.~~ 49 CFR § 18.36(b)(9) by implication and/or 49 CFR § 19.46(b)
- 20) No Excessive Bonding Requirements. ~~FTA Master Agreement §8.g~~ 49 CFR § 18.36(h) and/or 49 CFR § 19.48(c)(5).
- 21) No Exclusionary Specifications ~~FTA Master Agreement §8.a.~~ 49 U.S.C. § 5325(h)
- 22) No Geographic Preferences, except A&E Services. ~~FTA Master Agreement §8.b.~~ 49 CFR § 18.36(c)(2)
- 23) Evaluation of Options, if applicable. FTA Master Agreement §9.1.

Sec. 3.2.C Applicability of Third Party Contract Clauses (Appendix-C)

Federally required contract clauses are often applicable per specific industries, as well as per specific ranges of project/product costs. Some federally required contract clauses apply to all FTA funded procurements. Others may be specific to industry and/or budget. Appendix-C of this document can help identify when specific federally required contract clauses apply.

Sec. 3.2.D Forms & Documentation to Support Procurement Process (Appendix-D)

Consistent documentation of the procurement process is essential. To support complete and accurate process and its documentation, thereof, it is recommended that specific steps in the appropriate procurement process employ standard forms which accurately map the required steps for a complete process. Appendix-D of this document has examples of some of the most commonly recommended forms for:

- 1) Selection Committee – CONFIDENTIALITY & CONFLICT OF INTEREST POLICY

- 2) Cost Analysis
- 3) Fair & Reasonable Price Determination for micro-purchases. C4220.1F, Chapter VI, §3(a)(2)(c) indicates that micro-purchases are those purchases are under \$3,000 (CARTA's established micro-purchase limit is \$2,500). All micro-purchases:
 - a. May be made without obtaining competitive quotations,
 - b. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition,
 - c. "Fair & Reasonable" price documentation should be made, including the method of "Fair & Reasonable" determination.
- 4) Independent Cost Estimate (I.C.E.). C4220.1F, Chapter VI, §6, requires that the recipient must perform a cost analysis or price analysis in connection with every procurement action...as a starting point.
- 5) Piggybacking Checklist. C4220.1F, Chapter V, Section 7(a)(2) defines Piggybacking as an assignment of existing contract rights to purchase supplies, equipment, or services. A recipient that obtains contractual rights through assignment may use them after first determining that the original contract price remains "Fair & Reasonable". Grantees piggybacking on another agency's contract must ensure that the original contract contained an assignability clause and that the terms and conditions of that contract meet all FTA requirements.
- 6) Price Analysis
- 7) Pricing Guide for FTA Grantees
 - a. Introduction
 - b. Policy
 - c. Definitions
 - d. Price analysis
 - e. Cost analysis
 - f. Pricing tools
 - Tools for price analysis
 - Tools for cost analysis
 - g. < \$2,500 – Micro Purchase
 - Policy

- Pricing
 - Documentation
 - h. \$2,500 to \$100,000 – Small Purchase
 - Policy
 - Pricing
 - Documentation
 - i. \geq \$100,000
 - Policy
 - Pricing
 - Tips
- 8) Multi-Year & Options in Service Contracts
 - 9) Contract Cost Principles
 - 10) Negotiation & Documentation
 - a. Competitive Negotiation Process
 - b. Non-Competitive Negotiation Process
 - c. Preparation Documentation : the PM
 - d. SAMPLE Docs
 - Pre-Negotiation Memorandum (PM) Format
 - Post-Negotiation Memorandum (PNM) Format
 - 11) Modifications
 - 12) Pricing Examples
 - a. Based on Adequate Price Competition
 - b. Based on Previous Purchases
 - c. Based on Published Catalogs or Price Lists
 - d. Established Market Prices
 - e. Prices Set by Law or Regulation
 - f. Price Based on Comparison w/ Grantee Estimate
 - g. EXAMPLE: Limited Cost Analysis
 - h. EXAMPLE: Cost Analysis w/Certified Cost or Price Data
 - 13) Evaluation & Negotiations of Fixed Price A/E Contracts

- 14) Procurement Decision Matrix – REQUIRED FOR ALL PURCHASES
- 15) Procurement Summary – REQUIRED FOR ALL PURCHASES
- 16) Responsibility Determination – REQUIRED FOR ALL PURCHASES
- 17) Scope of Work (SOW) Template
- 18) Sole Source Justification

Sec. 3.3. Competition.

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

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business.
- (2) Unnecessary experience and excessive bonding requirements.
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to CARTA; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- (7) Any arbitrary action in the procurement process.

(b) *Prohibition Against Geographic Preferences.* In all procurements that involve federal funds, CARTA shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals, except in those cases where

applicable federal statutes expressly mandate or encourage geographic preference. This does not preempt state licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering services provided in its application leaves an appropriate number of qualified firms, given the name and size of the project, to compete for the contract.

(c) Disadvantaged Business Enterprises (DBE). As a State and Local Government of South Carolina, CARTA has a responsibility to report DBE activity for organizations which have been duly certified as DBE/MBE entities by the South Carolina Department of Transportation via the Unified Certification Program (SCCUP) and encourage any/all non-certified DBE entities to register for full certification, as well. For any formal procurement, CARTA will ensure DBE entities are notified directly if they are certified as responsible in the required service or industry. For purposes of reporting and tracking DBE participation, CARTA has written procedures for DBE Goals and Reporting posted in their Policy & Procedures Manual, §D-10.

Sec. 3.4. Methods of Source Selection.

Unless otherwise required by law, all Authority contracts shall be awarded by competitive sealed bidding, pursuant to Section 3.6 (Competitive Sealed Bidding), except as provided in:

- (1) Section 3.6: Competitive Sealed Bidding
- (2) Section 3.7: Micro-Purchases \leq \$2,500;
- (3) Section 3.8: Small Purchases $>$ \$2,500 and $<$ \$25,00;
- (4) Section 3.9: Competitive Sealed Proposals;
- (5) Section 3.10: Sole Source Procurement;
- (6) Section 3.11: Emergency Procurement; or
- (7) Section 5.8: Architect/Engineer, Land Surveying and Other Professional Services
 - a. Section 5.9: Design-Bid-Build projects
 - b. Section 5.10: Design-Build projects

Sec. 3.5. Source Selection and Contract Approval by ~~Authority Council~~CARTA Board.

CARTA Board shall retain the authority to establish a method of source selection other than those specified in sections 3.6 through 3.10 and 5.8. CARTA Board shall further retain the authority to give final approval to any procurement authorized under this manual.

Sec. 3.6. Competitive Sealed ~~Bidding~~Bids (Invitation for Bids). Required if contracts are greater than \$50,000.00

(a) *Conditions for use.* Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 3.4 (methods of source selection). The criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. No criteria may be used in bid ~~evaluation that are~~evaluation that is not set forth in the invitation for bids. For contracts involving federal funds, the following conditions shall be present for sealed bidding to be feasible:

- (1) a complete, adequate and realistic specifications or purchase description is available;
- (2) two or more responsible bidders are willing and able to compete effectively for the business;
- (3) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
- (4) no discussion with bidders is needed.

(b) *Invitation for bids.* The Invitation for Bids shall include the following:

- (1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by CARTA, and any other special information;
- (2) the purchase description, evaluation factors along with relative importance, delivery or performance schedule, a clear and accurate description of the technical requirements for the material product or service to be procured, and such inspection and acceptance requirements as are not included in the purchase description
- (3) the contract terms and condition, including warranty and

bonding or other security requirements, as applicable; and

(4) instructions to bidders to visibly mark as "confidential" each part of their bid which they consider to be proprietary information and to include an explanation of why the information is confidential as described in Section 1.4.

(c) *Public notice and bid solicitation.* Notice of all Invitations for Bids shall be publicly advertised and bids shall be solicited from an adequate number of known suppliers. Bidding deadlines will be set to provide bidders a reasonable time to prepare their bid. A minimum of seven (7) days shall be provided unless the Procurement and Contracts Administrator concludes that a shorter time is necessary for a particular procurement.

(d) *Bid opening.* The Procurement and Contracts Administrator shall publicly open the bids in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The bids shall be read aloud to those present. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection.

(e) *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

(1) *Cancellation of Bid Prior to Award.* Invitation for Bids may be cancelled after opening, but prior to award when the Procurement and Contracts Administrator, in his/her sole discretion, determines that:

(i) inadequate or ambiguous specifications were cited in the Invitation for Bids;

(ii) specifications have been revised;

(iii) the supplies or services being procured are no longer required;

(iv) adequate funds are not available or were not appropriated for the procurement;

(v) bids received indicate that the needs of CARTA can be satisfied by a less expensive article differing from that on which the

bids were requested;

(vi) all otherwise acceptable bids received are at unreasonable prices;

(vii) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;

(vii) requirements relating to availability and identification of specifications have not been met; or

(viii) for other reasons, the Procurement and Contracts Administrator determines that cancellation is in the best interest of CARTA.

(2) *Extension of Bid Acceptance Period.* Should administrative difficulties be encountered after bid opening which may delay award beyond bidder's acceptance periods, the several lowest bids should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

(3) *Rejection of Nonresponsive Bids.* Any bid which is nonresponsive or which fails to conform to the essential requirements of the Invitation for Bids shall be rejected. The reason for the rejection of any bid shall be in writing.

(4) *Bid Guarantee Requirement.* When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the Invitation for Bids, the bid shall be rejected.

(5) *Unsigned Bids.* Unsigned bids shall be rejected.

(6) *Minor Informalities and Irregularities in Bids.* The Procurement and Contracts Administrator, in his/[her](#) sole discretion, may either give a bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency.

(f) *Correction or Withdrawal of Bids; Cancellation of Awards.* A bidder or offeror must submit in writing a request to withdraw or correct a bid. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss. Except as otherwise provided herein, all decisions to permit the correction or withdrawal of bids or to cancel awards or

contracts based on bid mistakes shall be supported by a written determination made by the Procurement and Contracts Administrator.

(1) *Correction Creates Low Bid.* After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of CARTA or fair competition shall be permitted. To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake in the judgment of the Procurement and Contracts Administrator is clearly evident from examining the bid document; for example, extension of unit price or errors in addition.

(g) *Award.* Except as hereinafter prescribed, all contracts shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids ~~whether~~ possess the ability to perform successfully under the terms and conditions of the solicitation. When specified in bidding documents factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

(1) All bids on all single items of capital goods or capital building renovation projects (to be performed by outside contractors) shall be subject to review and approval by the Executive Director. Bids exceeding \$10,000.00 on all single items of capital goods or capital building renovation projects (to be performed by outside contractors) shall be subject to review and approval by CARTA Board.

(2) If all bids exceed available funds and no additional monies can be appropriated, then the bid may be cancelled. In the event all bids exceed available funds, and the low responsive and responsible bid does not exceed such funds by more than five (5) percent, the Procurement and Contracts Administrator is authorized in situations when time or economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment in the bid price, including changes in the bid requirements with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(h) *Tied bids.* The Procurement and Contracts Administrator is authorized in the case of tie bids to make awards on any reasonable basis, and in instances when that does not provide a solution, to reject all bids and negotiate a more

favorable purchase.

Sec. 3.7. Micro-Purchases.

Consistent with the Federal Acquisition Regulation (FAR), FTA considers micro-purchases to be those purchases of \$3,000 or less; CARTA's micro-purchase limit is \$2,500 to be in-line with ~~Charleston County Procurement~~[SC Department of Transportation](#).

- (1) When Appropriate. CARTA may acquire property and services valued at less than \$2,500 without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures. FTA does not intend to imply that the recipient must treat any purchase under \$2,500 as a micro-purchase. The recipient may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate.
- (2) Procedures. The following procedures apply to micro-purchases:
 - (a) Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.
 - (b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
 - (c) Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

Sec. 3.8. Small Purchases.

When the estimated cost of an item or service will not exceed ~~\$2510,000.00~~, the procurement may be made under the small purchase procedures provided herein to a responsible contractor possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Procurement requirements shall not be artificially divided, however, so as to constitute a small purchase.

- (a) *Competition and Price Reasonableness*. Purchase of individual items or

services with a cost not in excess of **\$2,500.00 (micro-purchase)** may be accomplished without securing competitive quotations if the Procurement and Contracts Administrator determines in writing that the prices are fair and reasonable. Such purchases may be equitably distributed among qualified suppliers in the local area. For purchases over **\$2,500.00** but less than ~~\$2510,000.00~~, solicitations of verbal or written quotes shall be obtained from three qualified sources of supply when such sources are available.

(b) *Blanket Purchase Agreements.*

(1) *General.* A Blanket Purchase Agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing a "charge account" with qualified sources of supply. Blanket Purchase Agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

(2) *Alternate Sources.* To the extent practicable, Blanket Purchase Agreements for items of the same type should be placed concurrently with one or more supplier. All competitive sources shall be given an equal opportunity to furnish supplies or services under such agreements.

(3) *Terms and Conditions.* Blanket Purchase Agreements shall contain the following provisions;

(i) *Description of Agreement.* A statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the Procurement and Contracts Administrator, or his/her designated representative, during a specified period and within a stipulated aggregate amount, if any. Blanket Purchase Agreements may encompass all items that the supplier is in a position to furnish.

(ii) *Extent of Obligation.* A statement that CARTA is obligated only to the extent of authorized calls actually placed against the Blanket Purchase Agreement.

(iii) *Notice of Individuals Authorized to Place Calls and Dollar Limitations.* A provision that a list of names of individuals authorized to place calls under the Blanket Purchase Agreement and the dollar limitation per call for each individual shall be furnished the supplier.

(iv) *Delivery Tickets.* A requirement that all shipments under

the Blanket Purchase Agreement shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

- (a) name of supplier;
 - (b) blanket purchase agreement number;
 - (c) date of call;
 - (d) itemized list of supplies or services furnished;
 - (e) quantity, unit price, and extension of each item less applicable discounts; and
 - (f) date of delivery.
- (v) *Invoices.* An individual invoice for each delivery shall be provided.

(4) *Calls Against Blanket Purchase Agreement.* Calls against Blanket Purchase Agreements generally will be made orally, except that informal correspondence may be used when ordering outside the local trade area.

(5) *Receipt and Acceptance of Supplies or Services.* Acceptance of supplies or services shall be indicated by signature and date on the delivery ticket or sales slip after verification and notation of any exceptions.

(6) *Time Limit.* Blanket Purchase Agreements shall not be for a period in excess of one year.

Sec. 3.9. Competitive Sealed Proposals. (Request for Proposals)

(a) *Conditions for use.* When the Procurement and Contracts Administrator determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to CARTA, a contract may be entered into by competitive sealed proposals.

(b) *Request for proposals.* A request for proposals should include the general scope of the proposal, criteria for selection along with their relative importance, information required to be submitted, activities to be performed, and instructions to offerors to visibly mark as "confidential" each part of their proposal

which they consider to be proprietary information and relevant costs and to include an explanation of why the information is confidential as described in Section 1.4.

(c) *Public notice and proposal solicitation.* Notice of all request for proposals shall be publicly advertised and proposals shall be solicited through a request for proposals from an adequate number of qualified sources.

(d) *Proposal opening.* Proposals shall be opened publicly by the Procurement and Contracts Administrator in the presence of one or more witnesses at the time and place designated in the Request for Proposals. A tabulation of those offering a proposal shall be made a public record. Contents of competing offers shall not be disclosed during the process of evaluation or negotiation.

(e) *Proposal evaluation.* Proposals shall be evaluated based on the criteria set forth in the request for proposals. The Procurement and Contracts Administrator shall have in place an acceptable method of and resources for conducting technical evaluations of the proposals received and for accepting awardees. Where appropriate, consultants may be hired to assist with proposal evaluation.

(f) *Discussion with Responsible Offerors and Revisions to Proposals.* Use of a Request for Proposals permits discussion after the proposals have been opened to allow clarification to assure full understanding of and responsiveness to, the solicitation requirements. All offerors shall be accorded fair and equal treatment with respect to any opportunity for submissions. The objective is to obtain a contract agreement which is most advantageous to CARTA in terms of factors such as period of performance, type of contract, quality of the items or services being purchased, and price. Proposals submitted by competing firms are not disclosed to the public or to competitors prior to award. However, after a contract is awarded, its terms and conditions will become public record.

(g) *Other Applicable Provisions.* The provisions of the following rules shall apply to Competitive Sealed Proposals:

- | | | |
|-----|--------------------------------------|---|
| (1) | 3.6(e)(3) | Rejection of Nonresponsive Bids; |
| (2) | 3.6(e)(4 6) | Minor Informalities and Irregularities in Bids; and |
| (3) | 3.6(e f)(5) | Correction or Withdrawal of Bids; Cancellation of Awards. |

(h) *Award.* The contract award shall be made within 45 days from the date of proposal opening unless the Procurement and Contracts Administrator

determines that a longer review time is necessary. Except as hereinafter prescribed, the award shall be made to the lowest responsive and responsible offeror whose proposal is determined in writing to be most advantageous to CARTA, taking into consideration the evaluation factors set forth in the request for proposals and who possess the ability to perform successfully under the terms and conditions of the solicitation. The contract file shall contain the basis on which the award is made. Proposed awards on all single items of capital goods or capital building renovation projects (to be performed by outside contractors) shall be subject to review and approval by CARTA's Executive Director. Proposed awards exceeding \$10,000 on all single items of capital goods or capital building renovation projects (to be performed by outside contractors) shall be subject to review and approval by CARTA Board.

Sec. 3.10. Sole Source Procurement.

(a) A contract may be awarded for a supply, service, or construction item without competition when the Executive Director and the Procurement and Contracts Administrator, determines in writing that either (i) there is only one source for the required supply, service, or construction item; (ii) a public exigency or emergency for the procurement will not permit a delay resulting from competitive solicitation; or (iii) after solicitation of a number of sources, competition is determined inadequate. After verification of a sole source vendor, or the justification for a sole source purchase is warranted, the Procurement and Contracts Administrator has the authority to negotiate the price, terms, and conditions of the procurement. CARTA's Board will be informed of all sole source awards of \$10,000.00 or greater.

(b) For contracts involving federal funds, (i) a cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required; and (ii) in addition to the requirements of subsection (a), sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and at least one of the following circumstances applies:

- (1) the item is available from a single source;
- (2) the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) FTA authorizes noncompetitive negotiations;
- (4) after solicitation of a number of sources, competition is determined inadequate; or

- (5) the item is an associated capital maintenance item as defined in 49 U.S.C. '5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (a) that such manufacturer or supplier is the only source for such item; and (b) that the price of such item is no higher than the price paid for such item by like customers.

Sec. 3.11. Emergency Procurement.

Notwithstanding any other provision of this manual, the Procurement and Contracts Administrator may make or authorize others to make emergency procurements when there exists an emergency conditions or when normal daily operations are affected, provided that such procurements shall be made with such competition as is practicable under the circumstances. These actions shall be documented and placed in the procurement files. The provisions of this section apply to every procurement made under emergency conditions.

(a) *Definition.* An emergency condition is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss or such other reasons as may be proclaimed by the Procurement and Contracts Administrator. The existence for such conditions must create an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:

- (1) the functioning of Authority;
- (2) the preservation or protection of property; or
- (3) the health or safety of any person.

The Procurement and Contracts Administrator may make or authorize others to make emergency procurement when a threat exists which is determined to negatively impact normal Authority operations.

(b) *Limitations.* Emergency procurement shall be limited to those supplies, services or construction items necessary to meet the emergency.

(c) *Conditions.* The Procurement and Contracts Administrator may make emergency procurement when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever

practical approval by either the Executive Director or CARTA Board shall be obtained prior to the procurement.

(d) *Selection of Method of Procurement.* The procedure used shall be selected to assure that the required supplies, services or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

(e) *General Procedure.* Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive or the low bid exceeds available funds and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after an unsuccessful attempt to use competitive sealed bidding, emergency procurement may be made.

(f) *Written Determination.* The Procurement and Contracts Administrator shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor.

Sec. 3.12. Cancellation of Invitation For Bids or Requests For Proposals.

An invitation for bids, a request for proposals or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of CARTA. The reasons therefore shall be made part of the contract file. Each solicitation issued by CARTA shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of CARTA.

Sec. 3.13. Responsibility of Bidders and Offerors.

(a) *Standards of Responsibility.* Factors to be considered in determining whether CARTA standards of responsibility have been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, personnel resources and expertise, or ability to obtain them;
- (2) compliance with public policy;
- (3) a satisfactory record of performance and integrity;
- (4) qualified legally to contract with CARTA; and
- (5) supplied all necessary information in connection with the inquiry

concerning responsibility.

(b) *Duty of Contractor to Supply Information.* The prospective contractor shall supply information requested by the Procurement and Contracts Administrator concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement and Contracts Administrator shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

(c) *Demonstration of Responsibility.* The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that such contractor possesses such necessary items;
- (2) acceptable plan to subcontract for such necessary items; or
- (3) a documented commitment form, or explicit arrangement with, a satisfactory source to provide the necessary items.

(d) *Justification for Contract Award.* Before awarding a contract, the Procurement and Contracts Administrator must be satisfied that the prospective contractor is responsible.

(e) *Written Determination of Nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Procurement and Contracts Administrator.

Sec. 3.14. Bid Security and Bonds.

Except as prescribed in sections 5.3 and 5.4 for construction contracts, all other contracts for equipment, supplies, and services may require bid security and performance bonds at the discretion of the Procurement and Contracts Administrator. Bid security, when required, shall be in an amount equal to at least five (5) percent of the amount of the bid. Performance bonds, when required, will normally be equal to one hundred (100) percent of the contract. A determination regarding bids received for equipment, supplies, and services without required bid security will be made by the Procurement and Contracts Administrator in the same manner as provided for in section 5.3(c).

Sec. 3.15. Prequalification of Suppliers.

(a) *Prequalification.* The Procurement and Contracts Administrator may

prequalify people, firms, and property for procurement purposes under the following standards:

1. Lists. CARTA must ensure that all prequalification lists that it uses are current.
2. Sources. CARTA must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.
3. Qualification periods. The process shall not preclude potential bidders or offerors from qualifying during the solicitation period (from the issuance of the solicitation to its closing date). CARTA is not required to hold a particular solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor must CARTA expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period.

The Procurement and Contracts Administrator thus may prequalify prospective contractors for bidders lists for particular types of supplies, services and construction, but distribution of the solicitation shall not be limited to prequalified contractors nor may a prospective contractor be denied award of a contract simply because such contractor was not prequalified. The fact that a prospective contractor has been prequalified does not constitute a finding of responsibility.

(b) *Qualified Products Lists.* A qualified products list may be developed by the Procurement and Contracts Administrator, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy Authority requirements. The procedures for inclusion of a product on the qualified products list (QPL) must be available to prospective vendors for consideration of their products on the list.

Sec. 3.16. Cost/Price Analysis.

The Procurement and Contracts Administrator is required to perform a cost or price analysis in connection with every procurement action, including contract modifications and options. The method and degree of analysis is dependent upon the facts surrounding the particular procurement situation, but as a starting point, the Procurement and Contracts Administrator must make independent estimates before receiving bids or proposals.

In order to reach a final evaluation that the proposal to be selected includes fair and reasonable costs/prices, it is required that the Procurement and Contracts Administrator have an estimate of the work effort in a detailed format to permit comparability to the expected proposals. Such an estimate provides the basis for negotiating the most favorable contract as well as providing assurance that the result is fair and reasonable.

Cost Analysis. A cost analysis must be performed when the [offeror](#) is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g. under professional consulting and architectural and engineering services contracts. Cost analysis is also required when adequate price competition is lacking, and for non-competitive or sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price

A cost analysis is a more detailed review of an offeror's proposal than a price analysis. It involves an in-depth look at the Contractor's cost and pricing data and of the judgmental factors applied in projecting from the data to estimated costs. The objective is to form an opinion as to the degree to which the proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

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

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

A cost analysis looks into such factors as:

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

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

Price analysis is a broad term that includes whatever actions the Procurement and Contracts Administrator takes to reach a decision that the price is fair and reasonable. These actions should include not less than two of the following approaches:

- (a) A comparison of competitive price quotations;
- (b) A comparison of prior quotations and contract prices with current quotations for the same or similar end-items;
- (c) The use of rough yardsticks such as dollar per pound, per horsepower, or other units to point up gross inconsistencies;
- (d) A comparison of prices or published price lists issued on a competitive basis, and published market prices of commodities, together with discount or rebate schedules; and
- (e) A comparison of proposed prices with independent estimates.

The conclusion that a price is fair and reasonable is based on either a price analysis or a combination of price analysis and an analysis supported by discussion of the elements of cost that support the price. Some form of analysis, either price or cost analysis is performed for every contract awarded. The person conducting the price or cost analysis is required to document that "the price is fair and reasonable" and the basis for that conclusion.

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

Sec. 3.17. Cost or Price Data.

(a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed one hundred thousand dollars (\$100,000.00) and is to be awarded under section 3.7 (competitive sealed proposals), section 3.9, sole source procurement or section 5.8, architect-engineer, land surveying and other professional services or as otherwise directed by the Procurement and Contracts Administrator.

(a)(b) *Federal Cost Principles.* The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient. Separate cost principles apply to the following four categories of recipients:

- (1) Governmental Entities. OMB Guidance for Grants and Agreements, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87), " 2CFR Part 225, applies to project costs incurred by a recipient that is a State, local or Indian Tribal Government.
- (2) Educational Institutions. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-211)", 2CFR Part 220, applies to project costs incurred by a recipient that is a public or private institution of higher learning.
- (3) Non-Profit Entities. OMB Guidance for Grants and Agreements "Cost Principles for Non-Profit Organizations (OMB Circular 1-122)", 2CFR Part 230, applies to project costs incurred by a recipient that is a private non-profit entity.
- (4) For-Profit Entities. FAR Subpart 31.2, "Contracts with Commercial Organizations," applies to project costs incurred by a recipient that is a for-profit entity.

(c) *Exceptions to submissions relating to awarding of contracts.* The submission of cost or pricing data relating to the award of a contract is not required when:

- (1) The contract price is based on adequate price competition;

(2) The contract price is set by law or regulation; or

(3) It is determined in writing by the Procurement and Contracts Administrator that the requirements of subsection (a) of this section may be waived, and the determination states the reasons for such waiver.

(c) Required submissions relating to change orders or contract modifications.

A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract, when the modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed ten thousand dollars (\$10,000.00) or as otherwise directed by the Procurement and Contracts Administrator.

(d) Exceptions to submissions relating to change orders or modifications. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(1) Unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or

(2) It is determined in writing by the Procurement and Contracts Administrator that the requirements of subsection (c) of this section may be waived, and the determination states the reason for such waiver.

(e) Certification required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(f) Price adjustment provision required. Any contract awarded, change order or contract modification under which submission and certification of cost or pricing data are required shall contain a provision stating that the price to CARTA, including profit or fee, shall be adjusted to exclude any significant sums by which CARTA finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as the date agreed upon between CARTA and the contractor.

Sec. 3.18. Types of Contracts Generally.

Except as provided in this manual, any type of contract which will promote the best interest of CARTA may be used; provided that the use of a cost-plus-a-percentage-of-cost contract and percentage of construction cost method are prohibited. Time and material contracts will be used only (1) after a determination that no other type of contract is suitable; and (2) if the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

Sec. 3.19. Multiterm Contracts.

(a) *Specified period.* The term of a contract and the conditions of renewal or extension, if any, shall be set forth in the solicitation and shall be based on the funds available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. Contracts for rolling stock and replacement parts shall not exceed a five year term as required by 49 USC 5326(b).

In all other cases, the FTA requires grantees to exercise "sound business judgment", and "to establish contract terms no longer than necessary to accomplish the purpose of the contract."

(b) *Determination prior to use.* Prior to the utilization of a multiterm contract, it shall be determined in writing by the Procurement and Contracts Administrator:

(1) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) That such a contract will serve the best interest of CARTA by encouraging effective competition or otherwise promoting economies in Authority procurement.

The following factors are among those relevant to such a determination:

(1) firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;

(2) lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;

(3) stabilization of the subcontractor's work force over a longer

period of time may promote economy and consistent quality;

(4) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

(c) *General.* A multi-term contract is appropriate when it is in the best interest of CARTA to obtain uninterrupted services extending over more than one fiscal period, when the performance of such services involving high start-up costs, or when a changeover of service contracts involving high phase-in/phase-out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one fiscal period is necessary to best meet the needs of CARTA, but funds are available for only the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. All multi-term contracts shall contain a clause stating that when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

(d) *Objective.* The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurement which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

(e) *Section Inapplicable.* This section applies only to contracts for supplies or services described in subsection (c) of this section, and does not apply to any other contracts including, but not limited to, contracts for construction and leases of real property.

(f) *Solicitation.* The solicitation shall state:

(1) the estimated amount of supplies or services required for the proposed contract period;

(2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

(3) that the multi-term contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either CARTA's right or the contractor's rights under any termination clause in the contract;

(4) that the Procurement and Contracts Administrator must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period.

(5) whether bidders or offerors may submit prices for:

(i) the first fiscal period only;

(ii) the entire time of performance only; or

(iii) both the first fiscal period and the entire time of performance.

(6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared.

(g) *Award.* Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in," that is, give such bidder or offeror an undue competitive advantage in subsequent procurement.

Sec. 3.20. Revenue Contracts.

~~Chapter II, Section 2.(4) of~~ FTA C_4220.1F, ~~II, (b)(4)~~ states a revenue contract is a contract in which the recipient or Subrecipient 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. All revenue generating contracts will be competitively solicited ~~and will not exceed a term of five (5) years unless FTA permits a longer term.~~

Sec. 3.21. Leases.

(a) *Definition.* A lease is a contract for the use of equipment, other supplies or real property under which title does not pass to CARTA unless there is a purchase option when title may pass to CARTA at some future time.

(b) *Conditions.* A lease may be entered into provided:

(1) The Procurement and Contracts Administrator determine that the lease is in the best interest of CARTA after an analysis has been made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical purchase;

(2) All conditions for renewal and costs of termination are set forth in the lease; and

(3) The lease is not used to circumvent normal procurement procedures.

~~(b)(c)~~ *Lease with purchase option.* A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposal or the leased supply or facility is the only supply or facility that can meet CARTA's requirements as determined in writing by the Procurement and Contracts Administrator.

~~(c)(d)~~ **Lease vs Purchase.** To obtain the best value, the recipient should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The recipient may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the recipient may lease an asset, FTA regulations, "Capital Leases," 49 CFR Part 639, Subpart C, require the recipient to make a written comparison of the cost of leasing the asset compared

with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.

Sec. 3.22. Option Provisions.

When a contract is to contain an option for renewal, extension or purchase, notice of such provision shall be included in the solicitation. Exercise of the option is always at CARTA's discretion only and not subject to agreement or acceptance by the contractor. 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 the Procurement and Contracts Administrator has determined that the option price is better than the prices available in the market or that the option is the more advantageous offer at the time the option is exercised. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Sec. 3.23. Maintenance Contracts.

All maintenance contracts and agreements must be forwarded to the procurement department for review and approval. The Procurement and Contracts Administrator will review the contract for proper terms and conditions as well as for fair pricing. Maintenance contracts will only be approved by the Procurement and Contracts Administrator or the Executive Director.

Sec. 3.24. Right of Inspection.

CARTA may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by CARTA. All contracts with CARTA shall contain the following clause "The Charleston Area Regional Transportation Authority, may at reasonable times, inspect the part of the plant or place of business of the contractor or any subcontractor which is related to the performance of this contract."

Sec. 3.25. Auditing.

(a) *Audit of cost or pricing data.* CARTA may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to section 3.16 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) *Contract audit.* CARTA shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

(c) *Contract Clauses.* All contracts with CARTA shall contain the following clauses:

(1) Audit of Cost or Pricing Data. "The Charleston Area Regional Transportation Authority may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing."

(2) Contract Audit. "The Charleston Area Regional Transportation Authority shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing."

Sec. 3.26. Records.

(a) *Contract file required.* It will be the responsibility of the Procurement and Contracts Administrator to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. -The Procurement and Contracts Administrator should also periodically review procurement files and assure that proper documentation is being maintained. Only limited access to the files is provided. To insure that all pertinent and required documentation is contained within a standardized filing system, at a minimum, the following documentation will be incorporated in the contract file:

- (1) Copy of executed contract;
- (2) Copy of general contract provisions;
- (3) Authority resolution;
- (4) Bid requirements and conditions;
- (5) Summary of bid evaluation;
- (6) Bid and performance bond data;
- (7) Requests for approved equals or clarifications and Authority responses;
- (8) Invitation to bid with all addenda;
- (9) Technical Specifications;
- (10) Legal notice to bidders;
- (11) Purchase requisition; and
- (12) Change orders.

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

- (1) Rationale for the method of procurement;
- (2) Selection of contract type;
- (3) Reasons for contractor selection or rejection;
- (4) Basis for contract price (cost/price analysis); and
- (5) Summary of negotiations.

Each file is maintained and controlled by the Procurement and Contracts Administrator.

(b) *Construction Contract Files* - Construction contract (RFP/IFB) files shall include:

1. Weekly payroll sheets as required by Davis-Bacon Act;
2. Release of liens, materials, and payments bonds, etc.;
3. Insurance documents.

(c) *Retention*. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by CARTA. If a contract is being funded in whole or in part by assistance from a federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement or the final disposition of any controversy arising out of the assistance agreement.

Sec. 3.27. Contract Monitoring and Closeout Procedures.

The Procurement and Contracts Administrator shall designate a Contract Administrator for each contract who shall report to the Procurement and Contracts Administrator. Throughout the term of the contract, the Contract Administrator shall confirm that the contractor is performing in accordance with the solicitation and the terms and conditions of the contract. Prior to the contract completion date, the Contract Administrator shall confirm that all contracted equipment, services and/or supplies have been delivered in an acceptable manner, that the contractor is performing in accordance with the solicitation and the terms and conditions of the contract and that no contractor effort will be required after the specified contract completion date and that the contract may be closed out. This action shall be initiated at least ninety (90) days prior to the specified completion date, whenever possible. This is necessary to determine compliance with the contract, whether there will be an overrun; to negotiate and extend the period of performance, if necessary; and, to allow sufficient procurement lead time if there is a follow-on effort. If the contract is to be completed on schedule, the Contract Administrator shall proceed with the contract closure; otherwise, appropriate action shall be taken to extend the contract.

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

Upon return of the Contractor's closing document, the Contract Administrator shall review the documents for completeness and, if acceptable, complete the closeout utilizing CARTA's closeout checklist. The Contract Administrator, with review by the Procurement and Contracts Administrator, shall initiate grant closeout with FTA, TDOT, or other federal and state agencies, as applicable. If the documents are not acceptable, the Contract Administrator shall follow-up with the Contractor and ~~obtain~~ obtains the information required.

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

As to all routine contracts for supplies, materials and non-professional services, upon confirmation of a pending contract completion, the Contract Administrator shall determine whether a final contract audit is required. If an audit is required, the Contract Administrator shall assist in arranging for the audit. As to all other contracts, the Contract Administrator, with review by the Procurement and

Contracts Administrator, shall submit a recommendation to the Executive Director as to the need for a final contract audit and shall implement the decision of the Executive Director.

Professional services contract closeout will not occur immediately after the completion date of the contract but over a period of time. Some events will occur prior to the contract completion date and others, such as final audit and indirect rate negotiations, may occur after the contract completion date. The Contract Administrator is responsible for insuring that contract files are closed in a timely manner and closeout actions are documented in details as appropriate.

Upon completion of the closeout checklist, the contract file shall be reviewed and certified as complete by the Executive Director. The following should be helpful in this final review:

- (a) Closeout documents, information, and correspondence filed under separate tab?
- (b) File purged of extra copies, staples, clips, envelopes, and paper scraps?
- (c) File contains Purchase Request, Advertisement Copy, RFP, Procurement Summary, Board Resolution, and Cost and Price Analysis for contract and all changes? (If not in file, document where it can be found.)

Sec. 3.28. Contract Provisions.

The Procurement and Contracts Administrator will review the draft contract before submitting it to the vendor to assure that the contract is acceptable and all the applicable federal, state, and local clauses are included. These would include, but not be limited to, Civil Rights, Disadvantaged Business Enterprise (DBE), Buy America, Lobbying, Debarment, and Davis-Bacon Act. The Procurement and Contracts Administrator will also assure that when required the proper certifications are included and signed. As a convenience, Appendix-A, attached hereto and incorporated herein, summarizes certain current clauses and certifications required for various types and amounts of contracts involving federal funds. No warranty is made as to the accuracy of the same and the underlying regulations and laws are subject to change from time to time. Bidders, offerors, and contractors are charged with knowledge of any federal, state or local regulation, law or procedure pertaining to a proposed contract and have an independent duty to ascertain the nature and applicability of same. All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- (a) Administrative, contractual or legal remedies in instances when

contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold).

(b) Termination for cause and for convenience by CARTA including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000).

(c) The requirement of FTA Circular 4220.1F ~~apply~~applies to all third party purchase orders and contracts using federal funds.

(d) In all protests involving contracts using federal funds, CARTA shall disclose all information regarding the protest to the FTA.

(e) Violations of federal law or regulation will be handled by the complaint process stated within that law or jurisdiction. Violation of the State of South Carolina or local law or regulations will be under the jurisdiction of State or local authorities.

(f) All negotiated contracts (except those for less than the small purchase threshold) shall include a provision to the effect that CARTA, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(h) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for CARTA to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000 and involves federal funds. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of CARTA, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a

contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

Sec. 3.29. Contract Award Announcement.

If CARTA announces contract awards with respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more, CARTA shall:

(a) specify the amount of federal funds that will be used to finance the acquisition in any announcement of the contract award for such goods or services; and

(b) express the said amount as a percentage of the total costs of the planned acquisition.

Sec. 3.30. Rolling Stock.

In acquiring rolling stock, in contracts involving federal funds, CARTA shall:

(a) *Method of Acquisition.* CARTA may acquire rolling stock by awarding the third party contract based on: (i) a competitive procurement process, (ii) the initial capital cost of the rolling stock, or (iii) the performance, standardization, life cycle costs, and other factors pertaining to the rolling stock, in accordance with 49 U.S.C. '5325(b), as amended.

(b) *Bus Testing.* To the extent applicable, CARTA shall comply with the requirements of 49 U.S.C. '5323(c), as amended, and FTA regulations, "Bus Testing," 49 CFR Part 665, as amended.

SECTION 4. SPECIFICATIONS

Sec. 4.1. Definitions.

(a) *Brand Name Specification*. A specification limited to one or more items by manufacturer's names or catalogue number.

(b) *Brand Name or Equal Specification*. A specification which uses one or more manufacturer's names or catalogue numbers to describe the standards of quality, performance and other characteristics needed to meet Authority requirements and which provides for the submission of equivalent products.

(c) *Qualified Products List*. An approved list of supplies, services or construction items described by model or catalogue number which, prior to competitive solicitation, CARTA has determined will meet the applicable specification requirements.

(d) *Specification*. Any description of the physical, functional or performance characteristics or the nature of a supply, service or construction item. A specification includes, as appropriate, requirements for inspection, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the term "specification" and "purchase description" are used interchangeably throughout the regulation.

(e) *Specification for a Common or General Use Item*. A specification which has been developed and approved for repeated use in procurement.

Sec. 4.2. Duties of the Procurement and Contracts Administrator.

The purpose of a specification is to serve as a basis for obtaining a supply, service or construction item adequate and suitable for the extent practicable, the cost of ownership and operation as well as initial acquisition cost.

(a) *General Authority of the Procurement and Contracts Administrator*. The Procurement and Contracts Administrator may prepare and issue specifications for supplies, services and construction required by CARTA.

(b) *Use of Functional or Performance Descriptions*. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of CARTA. It is recognized, however, that the preference for use of functional or performance specifications is primarily applicable to the procurement of supplies and services. Such preference is often not practicable in construction, apart from the procurement of supply type items for a construction project.

(c) *Preference for Commercially Available Products.* It is the general policy of CARTA to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided to the extent practicable.

(d) *Brand Name or Equal Specifications.*

(1) *Use.* Brand name or equal specifications may be used when the Procurement and Contracts Administrator determines that: no other design or performance specification or qualified products list is available; time does not permit the preparation of another form of purchase description, not including a brand name specification; the nature of the product or the nature of CARTA's requirements make use of a brand name or equal specification suitable for the procurement; or use of a brand name or equal specification is CARTA's best interest.

(2) *Designation of Several Brand Names.* Brand name or equal specifications shall seek to designate two, or as many different brand names as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) *Required Characteristics.* Unless the Procurement and Contracts Administrator determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, function, or performance characteristics which are required.

(4) *Nonrestrictive Use of Brand Name or Equal Specifications.* When a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(5) *Qualified Products List.* A qualified products list may be developed by the Procurement and Contracts Administrator, when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best certify Authority requirements. The procedures for the inclusion of a product on the qualified products list (QPL) must be available to prospective vendors for consideration

of their products on the list.

(e) *Preference for Products That Conserve Natural Resources.* It is the general policy of CARTA to procure products and services, to the extent practicable and economically ~~feasible, that~~feasible - conserve natural resources and protect that conserves natural resources and protects the environment and are energy efficient.

(f) *Prohibition Against Exclusionary or Discriminatory Specification.* In all procurements that involve federal funds, CARTA may not use a grant or loan to support a procurement that uses exclusionary or discriminatory specification.

(g) *Bus Seat Specifications.* CARTA may use specifications conforming with the requirements of 49 U.S.C '5323(e), as amended to acquire bus seats involving federal funds.

(h) *Preference for Recycled Products.* To the extent practicable and economically feasible, CARTA shall provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to products described in U.S. Environmental Protection Agency guidelines at 40 CFR Parts 247-253, as amended, which implement section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. '6962, as amended.

Sec. 4.3. Maximum Practicable Competition.

All specifications shall be drafted so as to promote overall economy for the purpose intended and encourage maximum free and open competition in satisfying CARTA's needs and shall not be unduly restrictive. This should include the use of performance specifications whenever practical. The Procurement and Contracts Administrator shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3.9 (Sole Source procurement).

(1) Specifications for Construction. Specifications for construction shall be prepared on a project-by-project basis.

Sec. 4.4. Payment Provisions in Third Party Contracts.

(a) *Advance Payments.* CARTA will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from the Executive Director or in contracts involving the

expenditure of federal funds, prior written concurrence from the FTA is obtained.

(b) *Progress Payments*. CARTA may use progress payments provided the following requirements are follows:

(1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.

(2) When progress payments are used, CARTA must obtain title to property (materials, work in progress and finished goods) for which progress payments are made. Alternative security for progress payments by irrevocable letter of credit or equivalent means to protect CARTA's interests in the progress payments may be used in lieu of obtaining title.

SECTION 5. CONSTRUCTION, ARCHITECT- ENGINEER AND LAND SURVEYING SERVICES

Sec. 5.1. Definitions.

(a) *Change Order*. A written order signed by an authorized individual directing the contractor to make changes which the contract authorizes without the consent of the contractor.

(b) *Contract Modification*. A written alteration in specifications, construction, period of performance, price, quantity or other provisions of any contract accomplished by written supplemental agreement of the parties to the contract.

(c) *Prime Contractor*. A person who has a contract with CARTA to build, alter, repair, improve or demolish any public structure or building or other real property improvements of any kind to any public real property.

(d) *Architect-engineer and land surveying services*. Those professional services within the scope of the practice of architecture, professional engineering, land surveying, including but not limited to, program management, construction equipment, feasibility studies, preliminary engineering, design, surveying, mapping and services which require performance by a registered or licensed architect, engineer or land surveyor.

Sec. 5.2. Selection of Method of Construction Contract Management.

The Procurement and Contracts Administrator shall recommend to the Board the appropriate method of construction contracting management for a particular project. In determining which method to recommend, the Procurement and

Contracts Administrator shall consider CARTA's requirements, its resources and the potential contractors capabilities as well as the following:

(a) *General.* The Board shall select the contracting method which is most advantageous to CARTA and will result in the most timely, economical, and otherwise successful completion of the construction project.

(b) *Selecting the Method of Construction Contracting.* In selecting the construction contracting method, results achieved on similar projects in the past and the methods used should be considered. The Procurement and Contracts Administrator shall have sufficient flexibility in formulating the project delivery approach for a particular project to fulfill CARTA's needs.

(c) *Construction Procurement.* The Invitation for Bids requirements shall apply to implement these requirements.

(d) For such contracts involving federal funds, CARTA shall use competitive proposal procedures based on the Brooks Act when contracting Architectural and Engineering Services (A&E). The Brooks Act requires that:

- (1) an offeror's qualifications be evaluated;
- (2) price be excluded as an evaluation factor;
- (3) negotiations be conducted with only the most qualified offeror;

and

(4) failing agreement on price, negotiations with one next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

This "qualifications based procurement method" can only be used for the A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services. These requirements apply except to the extent South Carolina adopts by statute a formal procedure for the procurement of architectural and engineering services.

Sec. 5.3. Bid Security for Construction Contracts.

(a) *Requirement.* Bid security shall be required for all construction contracts when the price of the contract is greater than or equal to \$100,000 or otherwise estimated by the Procurement and Contracts Administrator to warrant bid security.

Bid security shall be a bond provided by a surety company authorized to do business in this state, certified check, or the equivalent in cash. The bid security shall be made payable to CARTA.

(b) *Amount.* Bid security shall be in an amount equal to at least five (5) percent of the amount of the bid, and will remain in place until completion of construction or posting of performance/payment bonds.

(1) *Return of Bid Security.* For contracts under \$25,000 that require bid security, the bid security will be returned to the unsuccessful bidders upon award of contract. Bid security of the successful bidder will be returned upon satisfactory completion of the contract. For contracts over \$25,000 that require bid security, the bid security shall be returned to all bidders after award of contract. If no contract has been awarded within 60 days of bid opening, the bid security will be returned upon demand of the bidder.

(2) *Non-Performance by Successful Bidder.* Non-performance by the successful bidder or his/her failure to execute the contract or meet performance and payment bond requirements when appropriate within 10 days after award shall result in his/her bid security being forfeited to CARTA as liquidated damages to the extent allowable in this manual.

(c) *Rejection of bid for noncompliance with bid security requirements.* When the invitation for bids requires security, noncompliance requires that the bid be rejected. However, if the failure to comply is determined by the Procurement and Contracts Administrator to be nonsubstantial in that only one (1) bid is received and time is of the essence or if none of the bidders provide bid security and the requirement for the bid security is determined by the Procurement and Contracts Administrator to have become nonsubstantial, then the bid or bids may be accepted.

(d) *Withdrawal of bids.* After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in section 3.6. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

(e) For contacts involving federal funds, CARTA shall comply with bid guarantee, performance and payment bonding provisions of 49 C.F.R. '18.36(h), as amended, or 40 C.F.R. '19.48, as amended, and with any requirements FTA may issue.

Sec. 5.4. Construction Contract Performance and Payment Bonds--Generally.

(a) *Required amounts.* When a construction contract is awarded if the contract price is \$100,000 or over or at the discretion of the Procurement and Contracts Administrator, the following bonds or security shall be delivered to CARTA and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to CARTA, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to CARTA in an amount equal to one hundred (100) percent of the price specified in the contract; and

(2) A payment bond satisfactory to CARTA, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to CARTA for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred (100) percent of the price specified in the contract. Payment bond amounts required from contractors for contracts involving federal funds are as follows:

(i) 50% of contract price if contract price is not more than \$1 million;

(ii) 40% of the contract price if the contract is more than \$1 million but not more than \$5 million; or

(iii) \$2.5 million if the contract price is more than \$5 million.

(b) *Reduction of amounts.* Except contracts involving federal funds, the Procurement and Contracts Administrator is authorized to reduce the amount of performance and payment bonds to fifty (50) percent of the contract price for each bond when it has been determined in writing such reduction is necessary or warranted.

(c) *Authority to require additional bonds.* Nothing in this section shall be construed to limit CARTA of the Authority to require a performance bond or other security in addition to those bonds or in circumstances other than specified in subsection (a) of this section.

(d) *Right to institute suits on payment bonds.* Every person who has furnished labor or materials to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefore before the expiration of a period of ninety

(90) days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made shall have the right to sue on the payment bond for the amount or the balance thereof unpaid at the time of institution of such suit and to prosecute such action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing the payment bond, shall have a right of action upon the payment bond, upon giving written notice to the contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of material upon which such claim is made stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(e) *Time and place of payment bond suits.* Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction, but no such suit shall be commenced after the expiration of one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in such suit.

Sec. 5.5. Construction Contract Performance and Payment Bonds--Forms; Certified Copies.

(a) *Forms.* The Procurement and Contracts Administrator shall issue the form of bonds required by this Section.

(b) *Certified copies.* Any person may request and obtain from CARTA a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

Sec. 5.6. Contract Clauses.

(a) *Required provisions.* All contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. Contract clauses appropriate for supply, service or construction contracts shall address the following subjects:

- (1) The unilateral right of CARTA to order in writing changes in the work within the scope of the contract;
- (2) The unilateral right of CARTA to order in writing temporary stoppage of the work or delaying performance that does not alter the scope

of the contract;

(3) Variations occurring between estimated quantities of work in a contract and actual quantities;

(4) Defective pricing;

(5) Liquidated damages. In contracts involving federal funds, CARTA may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project unless in a contract involving federal funds, the FTA permits otherwise. In contracts not involving the use of federal funds, liquidated damages clauses shall be included at the discretion of the Procurement and Contracts Administrator;

(6) Specified excuses for delay or nonperformance;

(7) Termination of the contract for default;

(8) Termination of the contract in whole or in part for cause and for the convenience of CARTA including the manner by which it will be effected and the basis for settlement;

(9) Suspension of work on a construction project ordered by CARTA;
and

(10) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses need not be included in a contract:

(i) When the contract is negotiated;

(ii) When the contract provides the site or design; or

(iii) When the parties have otherwise agreed with respect to the risk of differing site conditions.

(11) Administrative, contractual or legal remedies in instances when contractors violate or breach contract terms, including sanctions and

penalties as may be appropriate.

(b) *Price Adjustments.* Adjustments in price resulting from the use of contract clauses required in subsection (a) of this section shall be computed in one (1) or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the contract or subsequently agreed upon;

(3) By the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(4) In such other manner as the contracting parties may mutually agree; or

(5) In the absence of agreement by the parties, by unilateral determination by CARTA of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Section 7.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 3.16.

Sec. 5.7. Approval of Construction Contract Modifications, Change Orders or Price Adjustment

Every contract modification, change order, or contract price adjustment under a construction contract with CARTA in excess of ten thousand dollars (\$10,000.00) shall be subject to prior approval by the Executive Director. Contract modifications, change orders or price adjustments concerning construction contracts may be approved by the Procurement and Contracts Administrator or the Executive Director after a determination by the ~~Financial Administrator~~ Deputy Director of Finance and Administration as to the effect of the change on that total project budget.

As noted in C4220.1F, Chapter V, Section 7.b.(2), caution should be exercised

in reviewing proposed contract changes to identify acceptable cardinal changes for approval to avoid impermissible actions. A significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. Such practices are sometimes informally referred to as “tag-ons.” A change within the scope of the contract (sometimes referred to as an “in-scope” change) is not a “tag-on” or cardinal change.

1. Identifying Cardinal Changes. Although FTA has provided additional guidance in its Best Practices Procurement Manual, FTA has not developed a finite list of acceptable contract changes. Recognizing a cardinal change to a third party contract can be difficult. A cardinal change cannot be identified easily by assigning a specific percentage, dollar value, number of changes, or other objective measure that would apply to all cases.
2. Changes in Quantity. To categorize virtually any change in quantity as a prohibited cardinal change (sometimes referred to as an “out-of-scope” change) fails to account for the realities of the marketplace and unnecessarily restricts a recipient from exercising reasonable freedom to make minor adjustments contemplated fairly and reasonably by the parties when they entered into the contract. The U.S. Supreme Court decision in *Freund v. United States*, 260 U.S. 60 (1922) supports FTA's policy.
3. Tests. Among other things, customary marketing practices can influence the determination of which changes will be “cardinal.” Other tests involve the nature and extent of the work to be performed, the amount of effort involved, whether the change was originally contemplated at the time the original contract was entered into, or the cumulative impact on the contract's quantity, quality, costs, and delivery terms.
4. Rolling Stock. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle.

Formatted: Underline

Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.

Federal Procurement Standards. The broader standards applied in Federal contracting practice reflected in Federal court decisions, Federal Boards of Contract Appeals decisions, and Comptroller General decisions provide guidance in determining whether a change would be treated as a cardinal change. FTA does not imply that these Federal procurement decisions are controlling. FTA intends to consider the collective wisdom within these decisions in determining the nature of third party contract changes along the broad spectrum between permissible changes and impermissible cardinal changes. Other guidance can be found in FTA's Best Practices Procurement Manual and "Frequently Asked Questions" at the FTA Web site:

http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing

Sec. 5.8. Architect-Engineer, Land Surveying and Other Professional Services.

FTA's enabling legislation at 49 U.S.C. Section 5325 (b)(1) requires the use of the qualifications-based procurement procedures contained in the "Brooks Act," 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below. Qualifications-Based Procurement Procedures Required. The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in the 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directed related to, or lead to construction, alteration, or repair of real property. For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would select the finished products to be acquired for an FTA assisted construction project must be selected through qualifications-based procurement procedures.

A project involving construction does not always require that qualifications-based procurement procedures be used. Whether or not qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in an FTA assisted construction project are not services for which qualifications-based procurement procedures may be used. Nor are actual construction, alteration, or repair to real property the type of services for which qualifications-based procurement procedures may be used.

- (a) Qualifications-Based Procurement Procedures. The following procedures apply to qualifications-based procurements:
1. Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
 2. Price. Price is excluded as an evaluation factor.
 3. Most Qualified. Negotiations are first conducted with only the most qualified offeror.
 4. Next Most Qualified. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.
- (b) Effect of State Laws. To the extent that a State has, before August 10, 2005, adopted by law, an equivalent State qualifications-based procurement requirement for acquiring architectural, engineering, and design services, Federal "Brooks Act" procedures, 40 U.S.C. Sections 1101 through 1104, will not apply.
- (c) Audits and Indirect Costs. As required by 49 U.S.C. Section 5325 (b) (3), the following requirements apply to a third party contract for program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services:

1. Performance of Audits. The third party contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.
2. Indirect Cost Rates. The recipient and the third party contractor, its subcontractors and sub-recipients, if any, must accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.
3. Application of Rates. After a firm's indirect cost rates established as described in subparagraph 3.f(5)(b) of this Chapter are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or de facto ceilings.

Pre-notifications; Confidentiality of Data. Before requesting or using cost or rate data described in subparagraph 3.f(5)(b), a recipient must notify the affected firm(s). That data must be kept confidential and may not be accessible by or provided by the group of agencies that share cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, that cost and rate data may not be disclosed under any circumstances. FTA recognizes that many States have "Open Records" laws that may make it difficult to maintain confidential cost or rate data. As a result, before requesting or using cost or rate data, not only should a recipient notify the affected firm, but it must also obtain permission to provide that data in response to a valid request under applicable State law. The confidentiality requirements of 49 U.S.C. 5325(b)(3)(D) cannot be waived, even if they conflict with State law or regulations.

5.9 Design-Bid-Build. The design-bid-build procurement method requires separate contracts for design services and for construction.

- (a) Design Services. For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable Federal State and local law and regulations.

- (b) Construction. Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

5.10 Design-Build. The design-build procurement method consists 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. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) expressly authorizes the use of FTA capital assistance to support design-build projects "after the recipient complies with Government requirements," 49 U.S.C. Section 5325(d)(2).

1. Construction Predominant. The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based Brooks Act procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping or related A&E services unless required by State law adopted before August 10, 2005.
2. Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services – FTA expects the recipient to use qualifications-based procurement procedures based on the Brooks Act.

- (a) Selection Processes. The recipient may structure its design-build procurement using one or more steps as described, herein:

One-Step Method. The recipient may undertake its design-build procurement in a single step.

2. Two-Step Method. Another procurement method the recipient may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m. This method consists of:
 - a. Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors' technical qualifications and technical approach to the project. The recipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - b. Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified. By using this two-step method, it will not be necessary for the recipient to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

SECTION 6. SUPPLY MANAGEMENT

Sec. 6.1. Definitions.

The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Excess supplies shall mean any supplies other than expendable supplies having a remaining useful life but which are no longer required by the using agency in possession of the supplies.

Expendable supplies shall mean all tangible supplies other than nonexpendable supplies.

Nonexpendable supplies shall mean all tangible supplies having an original acquisition cost of over one hundred dollars (\$100.00) per unit and a probable useful life of more than one (1) year.

Supplies shall mean supplies owned by CARTA.

Surplus supplies shall mean any supplies other than expendable supplies no longer having any use to CARTA. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

Property. For the purpose of this Section 6, property means either expendable or nonexpendable property owned by CARTA.

Real Property. Real property means land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Personal Property. Personal property means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as patents, inventions, and copyrights.

Nonexpendable Personal Property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$100 or more per unit. Included under this classification, shall be weapons, and any item of a highly pilferable nature as determined by the Procurement and Contracts Administrator, regardless of acquisition cost.

Expendable Personal Property. Expendable personal property refers to all tangible personal property other than nonexpendable property.

Acquisition Cost of Purchased, Nonexpendable Personal Property. Acquisition cost of items of purchased, nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, is to be included in the unit acquisition cost.

Sec. 6.2. Management of Supplies

(a) ~~Procurement and Contracts Administrator~~ Deputy Director of Finance and Administration or his/her designee.

(1) Inventory Control. The ~~Procurement and Contracts Administrator~~ Deputy Director of Finance and Administration or his/her designee shall be responsible for establishing and maintaining an inventory control system for all expendable property held as inventory.

(i) Expendable Property. On an annual basis, all

expendable property held in storage shall be physically inventoried by personnel under the supervision of the ~~Procurement and Contracts Administrator~~Deputy Director of Finance and Administration

(ii) Nonexpendable property. All nonexpendable property shall be identified with appropriate tags and recorded in a central register maintained by the ~~Procurement and Contracts Administrator~~Deputy Director of Finance and Administration. All nonexpendable property shall be listed individually with locations of the property. On a semi-annual basis, the Procurement and Contracts Administrator shall provide an up-to-date Inventory Status Report to project managers of all nonexpendable property on charge to their project. All nonexpendable property, regardless of location, shall be physically inventoried by the project manager to which the property is charged.

(b) Project manager Responsibilities.

(1) Inventory Status Report. The Inventory Status Report shall be distributed semi-annually to the project, and shall reflect an up-to-date listing of all property charged to the project. Upon receipt of the Inventory Status Report, the project manager shall conduct a thorough physical inventory of all nonexpendable property on charge to the project. The project manager shall certify on the Inventory Status Report that an inventory was conducted and that all property listed thereon is accounted for.

(2) File Maintenance Report. The File Maintenance Report is issued on a monthly basis, and is used to ensure accountability, accuracy and to serve as a reference for intermittent inventory transactions. This report is forwarded only to those projects which had changes in property charged to them. Changes such as additions, deletions or transfers are reflected in this report. Upon receipt of the File Maintenance Report, the project manager shall reconcile their records against the report and the Inventory Status Report when received.

(3) Lost, Missing or Stolen Property. Property which has been determined to be lost, missing or stolen shall be reported to the police by the project manager. A copy of the police report with a letter requesting deletion of the lost, missing, or stolen property from the department's property records shall be submitted by the project manager to the Procurement and Contracts Administrator. The letter shall set forth the known details surrounding the lost, missing or stolen property, what action is being taken by the project manager to prevent a recurrence and a full description of the

property in question.

~~(b)~~ ~~(c)~~ Change of Project managers. In the event there is to be a change of project manager, an exit inventory of all nonexpendable property on charge to the project shall be conducted prior to departure.

Formatted: Numbered + Level: 2 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Left + Aligned at: 1.13" + Indent
at: 1.41"

Formatted: Indent: First line: 0"

SECTION 7. LEGAL AND CONTRACTUAL REMEDIES

Sec. 7.1. Protest Procedures and Remedies Regarding Protested Solicitations and Awards.

(a) Any prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation of a contract may protest to the Executive Director. Any such protest must be delivered in writing within five (5) days of the issuance of the Invitation for Bids or Request for Proposals, or within five (5) days of amendment thereto if the amendment is at issue.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the Executive Director. Any such protest must be delivered in writing within five (5) days of the date the notice of award or intent to award is posted by the Executive Director.

(c) A protest must set forth all specific grounds of protest in detail and explain the factual and legal basis for each issue raised.

(d) The Executive Director may conduct any inquiries or conduct any hearings he/she deems necessary to reach his/her decision.

(e) Within ten days of receipt of the written protest, the Executive Director shall issue his/her decision in writing and send copies to all parties to the protest.

(f) If the Executive Director finds in favor of the protestant, he/she may award the protestant its bid preparation costs and other damages, but no such award shall exceed a total of \$5,000.00.

(g) Contracts shall not be stayed pending the decision of the Executive Director and the protestant's remedies set forth herein shall be the protestant's exclusive remedy, including any remedy for violation of this Manual.

(h) A protestant may appeal the decision of the ~~Procurement and Contracts Administrator~~Executive Director to the ~~procurement appeals~~ board in

accordance with the provisions of this Section by requesting a review, in writing, with the ~~procurement appeals~~ board in accordance with section 7.5. No new issues will be considered by the ~~procurement appeals~~ board on appeal.

(i) CARTA must notify FTA when it receives a third party contract protest related to the procurement of goods or services procured in whole or in part with federal funds. CARTA must thereafter keep FTA informed about the status of the protest. CARTA must provide the following information to FTA:

a. A list of protests involving third party contracts and potential third party contracts that:

- i. Have a value exceeding \$100,000, or
- ii. Involve a controversial matter, irrespective of amount, or
- iii. Involve a highly publicized matter, irrespective of amount.

b. For each protest, CARTA shall provide to FTA:

- i. A brief description of the protest,
- ii. The basis of disagreement,
- iii. If open, how far the protest has proceeded, or
- iv. If resolved, the agreement or decision reached, and
- v. Whether an appeal has been taken or is likely to be taken.

c. CARTA should provide this information to FTA:

- i. In its next quarterly Milestone Progress Report, and
- ii. At its next Project Management Oversight review, if any.
- iii. Small recipients may report less frequently if no protests are outstanding.

d. When CARTA denies a bid protest, and especially if an appeal to FTA is likely to occur, CARTA must inform the FTA Regional Administrator for the region administering a regional project, or the FTA Associate Administrator for the program office administering a headquarters project directly. CARTA must also contact its project manager about any unusual protest activity.

Sec. 7.2. Debarment or Suspension.

Basic Requirement: Chapter IV, 2.a(2)(b) C4220.1F – even though a debarment and suspension certification from the prospective third party contractor or a clause in the third part contract may require disclosure, CARTA will screen all potential contract awardees by checking the Excluded Parties List System (EPLS) prior to

award. The EPLS is currently part of the System for Awards Management (SAM) and is an electronic, web-based system that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Executive Director, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months.

(b) Causes. The causes for debarment or suspension include the following:

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

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

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

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

(i) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(5) Any other cause the Executive Director determines to be so serious

and compelling as to affect responsibility as a Authority contractor, including debarment by another governmental entity for cause;

(6) For violation of the ethical standards set forth in the State Ethics Act; and

(7) Failure to pay uncontested or unappealed, but delinquent, real or personal property taxes. These taxes are meant to include those taxes which have been turned over to the County sheriff by the treasurer as being delinquent and uncollected; however, this is not deemed to include tax assessments which are under appeal or in litigation.

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

(1) State the reasons for the action taken; and

(2) Inform the debarred or suspended person involved of its rights to administrative review as provided in this Section.

(d) Notice of decision. A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(e) Finality of decision. A decision under subsection (c) of this section shall be final and conclusive unless the debarred or suspended person appeals administratively to the procurement appeals board in accordance with section 7.5.

(f) Federal Debarment. For contracts involving federal funds, CARTA or any of its contractors shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs unless previous approval is received by the FTA. CARTA shall comply with 49 CFR part 29, and Executive Order 12549 and 12689, "Debarment and Suspension."

Sec. 7.3. Resolution of Contract Controversies.

(a) Applicability. This section applies to controversies between CARTA and a contractor and which arise under or by virtue of a contract between them. This includes without limitation, controversies based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission.

(b) Authority. The Executive Director is authorized, prior to commencement

of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection (a) of this section.

(c) Decision. If such a controversy is not resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing. The decision shall:

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

(2) Inform the contractor of its right to administrative review as provided in this Section.

(d) Notice of decision. A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the contractor

(e) Finality of decision. The decision under subsection (c) of this section shall be final and conclusive unless the contractor appeals administratively to the procurement appeals board in accordance with section 7.5.

(f) Failure to render timely decision. If the Executive Director does not issue the written decision required under subsection (c) of this section within thirty (30) days after written request for a final decision or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

(g) Any contract arising from this Invitation for Bids shall be governed by the laws of the State of South Carolina and any and all disputes arising out of said contract shall, if litigation is necessary, be litigated only in a non-jury hearing in the Circuit Court for the Ninth Judicial Circuit sitting in Charleston, South Carolina.

Sec 7.4. Solicitations or Awards in Violation of Law. The provisions of this section apply where it is determined administratively, or upon administrative review, that a solicitation or award of a contract is in violation of law.

(a) Remedies Prior to an Award.

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

(1) cancelled; or

(2) revised to comply with the law.

(b) Remedies After an Award.

If after an award it is determined that a solicitation or award of a contract is violation of law, then:

- (1) if the person awarded the contract has not acted fraudulently or in bad faith:
 - a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of CARTA, or
 - b. the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination;
- (2) if the person awarded the contract has acted fraudulently or in bad faith:
 - a. the contract may be declared null and void; or
 - b. the contract may be ratified and affirmed if such action is in the best interests of CARTA, without prejudice to CARTA right to such damages as may be appropriate.

Sec 7.5. Procurement appeals board.

(a) Established, composition, appointment. There is hereby established a procurement appeals board, hereinafter referred to as the "board," to be composed of a chairperson and at least two (2) other members, but not more than six (6) members. The chairperson and members of the board shall be appointed by CARTA Board.

(b) Term. The term of office of the chairperson and each member of the procurement appeals board shall be two (2) years, except that in making the initial appointments, three (3) members shall be appointed for a term of one (1) year, and two (2) members and the chairperson shall be appointed for a term of two (2) years so that half of the terms of office shall expire every year. Thereafter, their successors shall be appointed for terms of two (2) years, or for the balance of any unexpired term. Members may be reappointed for succeeding terms. CARTA Board may terminate for just cause any board member's term of office.

(c) Authority of chairperson. The chairperson of the procurement appeals board may adopt operational procedures and issue such orders not inconsistent with this manual as may be necessary in the execution of the board's functions. The chairperson's authority may be delegated to any of the board members, and only members of the board may issue decisions on appeals.

(d) Quorum. Two-thirds of those members appointed to the procurement appeals board shall constitute a quorum.

(e) Jurisdiction. The procurement appeals board shall have authority to review and determine:

(1) Any protest of a solicitation or award of a contract addressed to the board by an aggrieved actual or prospective bidder or offeror, or a contractor; and

(2) Any appeal by an aggrieved party from a determination by the Procurement and Contracts Administrator which is authorized in sections 7.1, 7.2 and 7.3.

(f) Rules of procedure. The procurement appeals board shall adopt rules of procedure which, to the fullest extent possible, will provide for the expeditious resolution of controversies.

(g) Time limit for filing an appeal. For an appeal under section 7.1, the aggrieved person shall file an appeal with the procurement appeals board within seven (7) days of receipt of a decision. For an appeal under sections 7.2 and 7.3 the aggrieved person shall file its appeal with the board within thirty (30) days of the receipt of a decision.

(h) Decisions. Upon receipt of an appeal from an aggrieved party, the chairperson shall convene the procurement appeals board within ten (10) days to conduct an administrative review of the appeal. The board within ten (10) days of hearing such appeal shall affirm, alter or deny the decisions rendered by the Procurement and Contracts Administrator. The board shall promptly decide whether the:

(1) Solicitation or award being appealed was in accordance with regulations and the terms and conditions of the solicitation;

(2) Debarment or suspension being appealed was in accordance with regulations in the best interest of CARTA and was fair;

(3) Contract and breach of contract controversy settlement being appealed was in accordance with regulations in the best interest of CARTA and was proper.

(i) Standard of review for factual issues. A determination of an issue of fact by the procurement appeals board shall be final and conclusive unless arbitrary, capricious, fraudulent or clearly erroneous.

(j) Appeal of decisions. The decision of the procurement appeals board is final as to administrative review. Any person receiving an adverse decision, CARTA or both may appeal from a decision by the procurement appeals board to the courts of the state under the provisions of the South Carolina Administrative Procedures Act.

Sec. 7.6. Protests to Federal Transit Authority.

Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue.

A subcontractor does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

An established consortium, joint venture, partnership or team that is an actual bidder or offeror and is acting in its entirety, would qualify as an "interested party" because it has a direct economic interest in the results of the procurement. An individual member of a consortium, joint venture, partnership, or team, acting solely in its individual capacity, does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

An association or organization that does not perform contracts does not qualify as an "interested party" because it does not have a direct economic interest in the results of the procurement.

The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the recipient's final decision. Likewise, the protester must provide its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has identified other grounds for appeal to FTA. For example, other grounds for appeal include the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest.

The FTA will limit its review of third party contract protests as follows:

(A) Procedural failures by CARTA. This would include protests that CARTA did not have protest procedures, that CARTA had not complied with its protest procedures, or that CARTA had not reviewed the protest when presented an opportunity to do so.

(B) Violations of federal law or regulations. FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will not consider every appeal merely because a federal law or regulation may be involved.

~~(A)~~(C) Violations of state or local law or regulations. FTA will refer violations of state or local law to the state or local authority having proper jurisdiction.

SECTION 8. INTERGOVERNMENTAL RELATIONS

Sec 8.1. Definitions.

The following words, terms and phrases when used in this Section shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

Cooperative purchasing shall mean procurement conducted by, or on behalf of, more than one (1) public procurement unit.

Public procurement unit shall mean any county, city, town, and any other subdivision of the state or public agency of any such subdivision, public authority, educational, health or other institution, any other entity which expends public funds for procurement of supplies, services or construction.

Sec 8.2. Cooperative purchasing authorized.

The Procurement and Contracts Administrator may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of supplies, services or construction with one (1) or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units.

Sec 8.3. Sale, acquisition or use of supplies.

The Procurement and Contracts Administrator may sell to, acquire from or use any supplies belonging to another public procurement unit independent of the requirements of Section 3 and Section 6 of this manual.

Sec 8.4. Cooperative use of supplies or services.

The Procurement and Contracts Administrator may enter into an agreement, independent of the requirements of Section 3 and Section 6 of this manual, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

Sec 8.5. Joint use of facilities.

The Procurement and Contracts Administrator may enter into agreements for the common use or lease of warehousing facilities, capital equipment and other facilities with another public procurement unit under the terms agreed upon between the parties.

Sec 8.6. Use of state contracts.

The Procurement and Contracts Administrator may, independent of the requirements of Section 3 of this manual, procure supplies, services or construction items through the contracts established by the purchasing division of the state as provided in Chapter 35 of Title 11 (State Consolidated Procurement Code), of the South Carolina Code of Laws, 1976, as amended, " 11-35-10, et seq.

SECTION 9. ETHICS

Sec 9.1. Standards of Conduct.

~~In all actions involving the procurement of supplies, services or construction for the Authority, the provisions of Chapter 13 of Title 8 (State Ethics Act) of the Code of Laws of South Carolina, §8-13-100 et seq. shall be complied with, as well as applicable federal law. The written standards of conduct govern the performance of its employees that are engaged in or otherwise involved in the award or administration of third party contracts.~~

Sec 9.1.a Personal Conflicts of Interest.

~~In procurements involving federal funds, n~~No Authority employee, Authority officer, Authority agent, Authority Board board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract supported by federal funds, if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm selected for award.:

Formatted: Indent: First line: 0"

~~(a) — The Authority employee, officer, agent or Board Member;~~

~~(b) — Any member of his or her immediate family;~~

~~(c) — His or her partner; or~~

~~(d) — An organization that employs, or is about to employ, any of the above.~~

Sec 9.1.b **Gifts** No Authority employee, officer, agent or Board board member will solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements except as provided by S.C. Code Ann. §8-13-100, et. seq.

Sec 9.1.c **Violations.** To the maximum extent permitted by State or local law or regulations, CARTA may impose penalties, sanctions, or other disciplinary action for violation of these Standards and Conduct by its officers, employees, agents, Board members, or by contractors, subcontractors, or sub-recipients or their agents.

Formatted: Font: Bold

CARTA

POLICY & PROCEDURE SECTION P-30 / PROCUREMENT APPENDIX - A - FEDERALLY REQUIRED AND OTHER MODEL CLAUSES

REQUIRED THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE	1	2	3
All FTA Assisted Third Party Contracts and Subcontracts					
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)		§ 2.f			
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f			
Access to Third Party Contract Records		§ 15.t			
Changes to Federal Requirements		§ 2.c(1)			
Termination	Contracts exceeding \$10,000 (49 CFR Part 18)	§ 11			
Civil Rights (Title VI, EEO, ADA)		§ 12			
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs.	§ 12.d			
Incorporation of FTA Terms	Per FTA C 4220.1F	§ 15.a			
Suspension and Debarment	Contracts exceeding \$25,000	§ 3.b			
Awards Exceeding the Simplified Acquisition Threshold (\$100,000)					
Buy America	When tangible property or construction will be acquired.	§ 14.a			
Resolution of Disputes, Breaches, or Other Litigation		§ 52			
Awards Exceeding \$100,000 by Statute					
Lobbying		§ 3.d			
Clean Air		§ 25.b			
Clean Water		§ 25.c			

REQUIRED AND OTHER MODEL CLAUSES

RD PARTY CONTRACT CLAUSES (Continued)

-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE	1	2	3
Transport of Property or Persons					
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§ 14.b			
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations	§ 14.c			
Construction Activities					

Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000	§ 24.a			
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000	§ 24.b			
Construction Employee Protections – Copeland Anti-Kickback Act	All contracts	§ 24.a			
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond 100% performance bond Payment bond equal to: – 50% for contracts < \$1M – 40% for contracts >\$1M – < \$5M – \$2.5M for contracts > \$5M	§ 15.o(1)			
Seismic Safety	Construction contracts for new buildings or for existing buildings	§ 23.e			
Nonconstruction Activities					
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (excluding transportation services contracts) in excess of \$100,000	§ 24.b			
Transit Operations					
Transit Employee Protective Arrangements		§ 24.d			
Charter Bus Operations		§ 28			
School Bus Operations		§ 29			
Drug Use and Testing	Safety sensitive functions	§ 32.b			
Alcohol Misuse and Testing	Safety sensitive functions	§ 32.b			

REQUIRED AND OTHER MODEL CLAUSES

RD PARTY CONTRACT CLAUSES (Continued)

-purchases, except for construction contracts over \$2,000)

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE	1	2	3
Planning, Research, Development, and Demonstration Projects					
Patent Rights		§ 17			
Rights in Data and Copyrights		§ 18			
Special Notification Requirements for States					
Special Notification Requirement for States		§ 37			
Miscellaneous Special Requirements					
Energy Conservation		§ 26			
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EP	§ 15.k			
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects	§ 15.m			
ADA Access	Contracts for rolling stock or facilities construction/renovation	§ 12.g			
Assignability Clause	Procurements through assignments	§ 15.a			

REQUIRED CERTIFICATIONS, REPORTS, AND FORMS

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE	1	2	3
Bus Testing Certification	Procurements of buses and modified mass produced vans	§ 15.n(4)			
TVM Certifications	All rolling stock procurements	§ 12.d(1)			
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000	§ 14.a			
Preaward Review	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)			
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)			
Preaward Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)			
Post Delivery Review	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)			
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)			
Post Delivery Purchaser's Requirement	Rolling stock procurements exceeding procurements exceeding \$100,000	§ 15.n(3)			
On-Site Inspector's Report	Rolling Stock procurements for more than 10 vehicles	§ 15.n(3)			
Federal Motor Vehicles Safety Standards Preaward and Post Delivery)	Motor vehicle procurements (49 CFR 571)	§ 15n(3)			
Lobbying	Procurements exceeding \$100,000	§ 3.d(1)			
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities	§ 3.d(1)			

OTHER REQUIRED ITEMS

REQUIREMENT	COMMENTS	FTA C 4220.1F REFERENCES	1	2	3
Contract Administration System		§ 7.b			
Record of Procurement History		§ 7.i			
Protest Procedures		§ 7.1			
Selection Procedures		§8.c			
Cost/Price Analysis		§ 10a-b			
Justification for Noncompetitive Awards	If Applicable	§ 9.h			
No Excessive Bonding Requirements		§ 8.a			
No Exclusionary Specifications		§ 8.a			
No Geographic Preferences	Except for A&E Services	§8.b			
Evaluation of Options	If Applicable	§ 9.I			

CARTA

POLICY & PROCEDURE

SECTION P-30 / PROCUREMENT

APPENDIX - D / CHECKLISTS & FORMS

D.3 Third Party Contracting Checklists (this item also cross-referenced as APPENDIX-C of C4220.1F from 11/01/2008)

- D.3 Applicability of Circular 4220.1F
- D.4 The Recipient's Responsibilities
- D.5 Determining the Recipient's Needs
- D.5 Contractor Qualifications
- D.6 Administrative Restrictions re: Acquisition of Property & Services
- D.7 Socio-Economic Requirements re: Acquisition of Property & Services
- D.8 Technical Restrictions re: Acquisition of Property & Services
- D.8 Rolling Stock/Special Requirements re: Acquisition of Property & Services
- D.8 Public Transportation Services/Special Requirements re: Acquisition of Property & Services
- D.9 Architectural/Engineering & Relation Services/Special Requirements re: Acquisition of Property & Services
- D.9 Construction/Special Requirements re: Acquisition of Property & Services
- D.10 Research, Development, Deployment & Special Studies/Special Rqmts re: Acquisition of Property & Services
- D.10 Audit Services/Special Requirements re: Acquisition of Property & Services
- D.11 Sources
- D.12 Open Market Procurements - Competition
- D.13 Open Market Procurements - Methods of Competitive Procurement
- D.15 Open Market Procurements - Methods of Procurement OTHER THAN Full & Open Competition
- D.16 Open Market Procurements - Evaluations
- D.17 Open Market Procurements - Contract Awards / Rejections of Bids & Proposals

D.17 Selection Committee - Confidentiality & Conflict of Interest Policy / Form

D.19 Cost Analysis Form

D.22 Fair & Reasonable Price Determination Form

D.23 Independent Cost Estimate (I.C.E.) Form

D.24 Piggybacking Checklist Form

D.25 Price Analysis Form

D.26 Pricing Guide for FTA Grantees

- D.28 Introduction
- D.28 Policy
- D.29 Definitions
- D.32 Price Analysis
- D.35 Cost Analysis
- D.36 Pricing Tools
 - Tools for Price Analysis
 - Tools for Cost Analysis
- D.37 < \$2,500
 - Policy
 - Pricing
 - Documentation
- D.38 \$2,500 to \$100,000
 - Policy
 - Pricing
 - Documentation
- D.39 ≥ \$100,000
 - Policy
 - Pricing
 - Tips

CARTA
POLICY & PROCEDURE
SECTION P-30 / PROCUREMENT
APPENDIX - D / CHECKLIST & FORMS
(CONTINUED)

D.40 Multi-Year & Options in Service Contracts

D.42 Contract Cost Principles

D.43 Negotiation & Documentation

D.43 Competitive Negotiation Process

D.44 Non-Competitive Negotiation Process

D.45 Preparation Documentation: the PM

D.46 SAMPLE DOCUMENTS

- Pre-Negotiation Memorandum (PM) Format

- Post-Negotiation Memorandum (PNM) Format

D.66 Modifications

D.68 Pricing Examples

D.68 * Price Based on Adequate Price Competition

D.68 * Price Based on Previous Purchases

D.69 * Price Based on Published Catalogs or Price Lists

D.70 * Established Market Prices

D.71 * Prices Set by Law or Regulation

D.71 * Price Based on Comparison w/Grantee Estimate

D.73 * EXAMPLE: Limited Cost Analysis (proper pricing VS improper pricing)

D.75 * EXAMPLE: Cost Analysis w/Certified Cost or Pricing Data (proper pricing VS improper pricing)

D-77 Evaluation & Negotiations of Fixed Price A/E Contracts

D.79 Procurement Decision Matrix

D.82 Scope of Work (SOW) Template

D.83 Sole Source Justification Form

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER II, Sec. 2	APPLICABILITY OF THE CIRCULAR	CHECK
Sec. 2.a	Participants in FTA Assisted Procurements	
Sec. 2.a(1)	Recipients of FTA Grants or Cooperative Agreement s	
Sec. 2.a(1)(a)	States	
Sec. 2.a(1)(a)1	Governmental Subrecipients of the State	
Sec. 2.a(1)(a)2	Private Non-Profit Subrecipients of the State	
Sec. 2.a(1)(b)	Recipients and Subrecipients that are not States	
Sec. 2.a(2)	Subrecipients of FTA Assistance	
Sec. 2.a(3)	Recipients of Both FTA Assistance and Funds Provided by Another Federal Agency	
Sec. 2.a(4)	Recipients of "Other Agreement" Assistance	
Sec. 2.a(5)	Third Party Contractors and Subcontractors	
Sec. 2.a(5)(a)	Status	
Sec. 2.a(5)(b)	Effect of Federal Requirements	
Sec. 2.b	Project Types and Third Party Contracts	
Sec. 2.b(1)	Capital Contracts	
Sec. 2.b(1)(a)	Capital Contracts Financed Without Federal Funds	
Sec. 2.b(1)(b)	Art	
Sec. 2.b(1)(c)	Over-the-Road Bus Accessibility Program	
Sec. 2.b(1)(d)	Real Property	
Sec. 2.b(2)	Operations Contracts	
Sec. 2.b(2)(a)	Operations Contracts Financed with FTA Assistance	
Sec. 2.b(2)(b)	Operations Contracts Financed Entirely Without FTA Assistance	
Sec. 2.b(3)	Preventive Maintenance Contracts	
Sec. 2.b(4)	Revenue Contracts	
Sec. 2.b(4)(a)	Limited Contract Opportunities	
Sec. 2.b(4)(b)	Open Contract Opportunities	
Sec. 2.b(5)	Joint Development	
Sec. 2.b(5)(a)	Construction Contracts	
Sec. 2.b(5)(b)	Revenue Contracts	
Sec. 2.b(5)(c)	Other Contracts	
Sec. 2.b(6)	Public-Private Partnerships	
Sec. 2.b(7)	Transactions Involving Complex Financial Arrangements	
Sec. 2.b(7)	Force Account	
Sec. 3	Federal Laws and Regulations	
Sec. 3.a	Common Grant Rules	
Sec. 3.a(1)	Governmental Recipients	
Sec. 3.a(2)	Non-Governmental Recipients	
Sec. 3.b	Federal Acquisition Regulation	
Sec. 3.c	Other Federal Requirements	
Sec. 3.c(1)	Compilation in the Master Agreement	
Sec. 3.c(2)	Conflicting Federal Requirements	
Sec. 3.d	Waivers	
Sec. 4	State and Local Laws and Regulations	
Sec. 4.a	Inadequate State and Local Requirements	
Sec. 4.b	Conflicts Between Federal Requirements and State or Local Requirements	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER III	THE RECIPIENT'S RESPONSIBILITIES	CHECK
Sec. 1.	Written Standards of Conduct	
Sec. 1.a	Personal Conflicts of Interest	
Sec. 1.b	Gifts	
Sec. 1.c	Violations	
Sec. 2	Self-Certification	
Sec. 3	Third Party Contracting Capacity	
Sec. 3.a	Written Procurement Procedures	
Sec. 3.a(1)	Solicitations	
Sec. 3.a(1)(a)	Clear Descriptions	
Sec. 3.a(1)(b)	Nonrestrictive Specifications	
Sec. 3.a(1)(c)	Quality Requirements	
Sec. 3.a(1)(d)	Preference for Performance Specifications	
Sec. 3.a(1)(e)	Brand Name or Equal	
Sec. 3.a(2)	Necessity	
Sec. 3.a(3)	Lease Versus Purchase	
Sec. 3.a(4)	Metric Usage	
Sec. 3.a(5)	Environmental and Energy Efficiency Preferences	
Sec. 3.a(6)	Procurement Methods	
Sec. 3.a(7)	Legal Restrictions	
Sec. 3.a(8)	Third Party Contract Provisions	
Sec. 3.a(9)	Sources	
Sec. 3.a(10)	Resolution of Third Party Contracting Issues	
Sec. 3.b	Adequate Third Party Contract Provisions	
Sec. 3.c	Industry Contracts	
Sec. 3.d	Record Keeping	
Sec. 3.d(1)	Procurement History	
Sec. 3.d(1)(a)	Procurement Method	
Sec. 3.d(1)(b)	Contract Type	
Sec. 3.d(1)(c)	Contractor Selection	
Sec. 3.d(1)(d)	Cost or Price	
Sec. 3.d(1)(e)	Reasonable Documentation	
Sec. 3.d(2)	Access to Records	
Sec. 3.e	Special Notification Requirements for States	
Sec. 3.f	Use of Technology/Electronic Commerce	
Sec. 3.f(1)	Sufficient System Capacity	
Sec. 3.f(2)	Written Procedures	
Sec. 3.f(3)	Uses	
Sec. 3.f(3)(a)	Standard Bidding and Proposal Procedures	
Sec. 3.f(3)(b)	Electronic Bidding and Reverse Auctions	
Sec. 3.f(3)(b)1	Value	
Sec. 3.f(3)(b)2	Procedures	
Sec. 3.f(3)(b)2.a	Notification)	
Sec. 3.f(3)(b)2.b	Bid or Quote Submission	
Sec. 3.f(3)(b)2.c	Information Displayed During the Auction	
Sec. 3.f(3)(b)2.d	Information Not Displayed During the Auction	
Sec. 3.f(3)(b)2.e	Information Displayed at the End of the Auction	
Sec. 3.f(3)(b)2.f	Information Provided at the End of the Auction	
Sec. 4	Audit	
Sec. 4.a	The Recipient's Auditors	
Sec. 4.b	Independent Auditors	
Sec. 4.c	Federal Audit Agencies	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER IV, Sec. 1	DETERMINING THE RECIPIENT'S NEEDS	CHECK
Sec. 1.a	Eligibility	
Sec. 1.b	Necessity	
Sec. 1.b(1)	Unnecessary Reserves	
Sec. 1.b(2)	Acquisition for Assignment Prohibitions	
Sec. 1.b(1)(a)	General Prohibition	
Sec. 1.b(1)(b)	Changes in the Recipient's Needs	
Sec. 1.b(1)(c)	Exceptions	
Sec. 1.b(1)(c)1	Joint Procurements	
Sec. 1.b(1)(c)1	State or Local Government Purchasing Schedules or Purchasing Contracts	
Sec. 1.c	Procurement Size	
Sec. 1.c(1)	Joint Procurements	
Sec. 1.c(2)	Smaller Procurements	
Sec. 1.d	Options	
Sec. 1.e	Lease Versus Purchase	
Sec. 1.f	Specifications	

CHAPTER IV, Sec. 2.a.	CONTRACTOR QUALIFICATIONS	CHECK
Sec. 2.a(1)	"Responsibility" Requirements	
Sec. 2.a(2)	Debarment and Suspension	
Sec. 2.a(2)(a)	DOT Debarment and Suspension Regulations	
Sec. 2.a(2)(b)	GSA Excluded Parties List System	
Sec. 2.a(2)(c)	State Debarment and Suspension Lists	
Sec. 2.a(3)	Conflict of Interest	
Sec. 2.a(4)	Lobbying Certification and Disclosure	
Sec. 2.a(5)	Federal Civil Rights Laws and Regulations	
Sec. 2.a(5)(a)	Federal Equal Employment Opportunity (EEO) Requirements	
Sec. 2.a(5)(a)1	Nondiscrimination in Federal Public Transportation Programs	
Sec. 2.a(5)(a)2	Prohibition Against Employment Discrimination	
Sec. 2.a(5)(b)	Nondiscrimination on the Basis of Sex	
Sec. 2.a(5)(c)	Nondiscrimination on the Basis of Age	
Sec. 2.a(5)(d)	Federal Protections for Individuals with Disabilities	
Sec. 2.a(6)	Socio-Economic Development	
Sec. 2.a(6)(a)	Disadvantaged Business Enterprises (DBE)	
Sec. 2.a(6)(b)	Small and Minority Firms and Women's Business Enterprises	
Sec. 2.a(6)(b)1	Notice	
Sec. 2.a(6)(b)2	Contract Size	
Sec. 2.a(6)(b)3	Delivery Schedule	
Sec. 2.a(6)(b)4	Small Business Administration and the Department of Commerce Minority Business Development Agency	
Sec. 2.a(6)(b)5	Subcontracting Opportunities	
Sec. 2.a(7)	Sensitive Security Information	
Sec. 2.a(8)	Seat Belt Use	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER IV, Sec.2.b	ADMINISTRATIVE RESTRICTIONS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.b(1)	Legal Eligibility	
Sec. 2.b(2)	Scope of the Project	
Sec. 2.b(3)	Period of Performance—Limits	
Sec. 2.b(3)(a)	General Standards	
Sec. 2.b(3)(b)	Federal Restrictions	
Sec. 2.b(3)(c)	Time Extensions	
Sec. 2.b(4)	Federal Cost Principles	
Sec. 2.b(4)(a)	Governmental Entities	
Sec. 2.b(4)(b)	Educational Institutions	
Sec. 2.b(4)(c)	Non-Profit Entities	
Sec. 2.b(4)(d)	For-Profit Entities	
Sec. 2.b(5)	Payment Provisions	
Sec. 2.b(5)(a)	FTA Support for the Project	
Sec. 2.b(5)(a)1	Award Made	
Sec. 2.b(5)(a)2	Preaward Authority	
Sec. 2.b(5)(a)3	Letter of No Prejudice	
Sec. 2.b(5)(b)	Advance Payments	
Sec. 2.b(5)(b)1	Use of FTA Assistance Prohibited	
Sec. 2.b(5)(b)2	Exceptions for Sound Business Reasons	
Sec. 2.b(5)(b)2.a	Adequate Security for Advance Payments (FTA Concurrence)	
Sec. 2.b(5)(b)2.b	Customary Advance Payments (FTA Concurrence – \$100,000+)	
Sec. 2.b(5)(b)2.b	Public Utility Connections and Services	
Sec. 2.b(5)(b)2.b	Rent	
Sec. 2.b(5)(b)2.b	Tuition	
Sec. 2.b(5)(b)2.b	Insurance Premiums	
Sec. 2.b(5)(b)2.b	Subscriptions to Publications	
Sec. 2.b(5)(b)2.b	Software Licenses	
Sec. 2.b(5)(b)2.b	Construction Mobilization Services	
Sec. 2.b(5)(b)2.b	Transportation	
Sec. 2.b(5)(b)2.b	Hotel Reservations	
Sec. 2.b(5)(b)2.b	Conference and Convention Registration	
Sec. 2.b(5)(b)2.b	Other	
Sec. 2.b(5)(c)	Progress Payments	
Sec. 2.b(5)(c)1	Adequate Security for Progress Payments	
Sec. 2.b(5)(c)2	Adequate Documentation	
Sec. 2.b(5)(c)3	Percentage of Completion	
Sec. 2.b(6)	Protections Against Performance Difficulties	
Sec. 2.b(6)(a)	Changes	
Sec. 2.b(6)(b)	Remedies	
Sec. 2.b(6)(b)1	Liquidated Damages	
Sec. 2.b(6)(b)2	Violation or Breach	
Sec. 2.b(6)(b)3	Suspension of Work	
Sec. 2.b(6)(b)4	Termination	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER IV, Sec. 2.c	SOCIO-ECONOMIC REQUIREMENTS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.c(1)	Labor	
Sec. 2.c(1)(a)	Wage and Hour	
Sec. 2.c(1)(b)	Fair Labor Standards	
Sec. 2.c(2)	Civil Rights	
Sec. 2.c(2)(a)	Nondiscrimination in Federal Public Transportation Programs	
Sec. 2.c(2)(b)	Title VI of the Civil Rights Act	
Sec. 2.c(2)(c)	Environmental Justice	
Sec. 2.c(2)(d)	Limited English Proficiency (LEP)	
Sec. 2.c(2)(e)	Nondiscrimination on the Basis of Disability	
Sec. 2.c(2)(e)1	Section 504 of the Rehabilitation Act of 1973, as amended (Section 504)	
Sec. 2.c(2)(e)2	The Americans with Disabilities Act of 1990, as amended (ADA)	
Sec. 2.c(3)(e)3	DOT Public Transportation Regulations-Section 504 and the ADA	
Sec. 2.c(3)(e)3.a	Design and Construction	
Sec. 2.c(3)(e)3.b	Accessibility and Usability	
Sec. 2.c(3)(e)3.c	Complementary Paratransit Service	
Sec. 2.c(3)(e)3.d	Equal Opportunity	
Sec. 2.c(2)(f)	Electronic Reports and Information	
Sec. 2.c(3)	Environmental Protections	
Sec. 2.c(3)(a)	Environmental Mitigation	
Sec. 2.c(3)(b)	National Environmental Policy Act	
Sec. 2.c(3)(b)1	Property	
Sec. 2.c(3)(b)2	Services	
Sec. 2.c(3)(c)	Protections for Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites	
Sec. 2.c(3)(d)	Clean Air	
Sec. 2.c(3)(e)	Clean Water	
Sec. 2.c(3)(f)	Recycled Products	
Sec. 2.c(3)(g)	Other Federal Environmental Protection Requirements	
Sec. 2.c(3)(g)	Wild and Scenic Rivers	
Sec. 2.c(3)(g)	Coastal Zones	
Sec. 2.c(3)(g)	Wetlands	
Sec. 2.c(3)(g)	Endangered Species	
Sec. 2.c(3)(g)	Fisheries	
Sec. 2.c(3)(g)	Historic Sites	
Sec. 2.c(3)(g)	Archeological Sites	
Sec. 2.c(3)(g)	Indian Sacred Sites	
Sec. 2.c(4)	Energy Conservation	
Sec. 2.c(5)	Preference for U.S. Property—Buy America	
Sec. 2.c(6)	Shipments of Property—U.S. Flag Requirements	
Sec. 2.c(6)(a)	Shipments by Ocean Vessel	
Sec. 2.c(6)(b)	Shipments by Air Carrier	
Sec. 2.c(7)	Project Travel—Use of U.S. Flag Air Carriers	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER IV, Sec. 2.d	TECHNICAL RESTRICTIONS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.d(1)	Intelligent Transportation Systems	
Sec. 2.d(2)	Metric Measurements	
Sec. 2.d(3)	Use of \$1 Coins	

CHAPTER IV, Sec. 2.e	ROLLING STOCK—SPECIAL REQUIREMENTS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.e(1)	Accessibility	
Sec. 2.e(2)	Transit Vehicle Manufacturer Compliance with DBE Requirements	
Sec. 2.e(3)	Minimum Service Life	
Sec. 2.e(4)	Spare Ratios	
Sec. 2.e(5)	Air Pollution and Fuel Economy	
Sec. 2.e(6)	Preaward and Post Delivery Review	
Sec. 2.e(7)	Bus Testing	
Sec. 2.e(8)	In-State Dealers	
Sec. 2.e(9)	Basis for Contract Award	
Sec. 2.e(10)	Five-Year Limitation	

CHAPTER IV, Sec. 2..f	PUBLIC TRANSPORTATION SERVICES – SPECIAL REQUIREMENTS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.f(1)	Protections for Public Transportation Employees	
Sec. 2.f(2)	Drug and Alcohol Testing	
Sec. 2.f(3)	Accessibility	
Sec. 2.f(4)	Protection of Animals	
Sec. 2.f(5)	Charter Service Restrictions	
Sec. 2.f(6)	School Bus Restrictions	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER IV, Sec. 2.g	ARCHITECTURAL ENGINEERING AND RELATED SERVICES—SPECIAL REQUIREMENTS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.g(1)	Qualifications-Based Requirements	
Sec. 2.g(2)	Relation to Construction	
Sec. 2.g(2)(a)	Purpose of Services	
Sec. 2.g(2)(b)	Requirements in the Context of a Construction Project	
Sec. 2.g(2)(b)1	End Products Used in Construction	
Sec. 2.g(2)(b)2	Services Related to Design of Construction Projects	
Sec. 2.g(2)(b)3	Actual Construction	
Sec. 2.g(2)(c)	Type of Contractor Not Determinative	
Sec. 2.g(3)	Equivalent State Law	
Sec. 2.g(4)	Special Requirements for Indirect Cost Rates	

CHAPTER IV, Sec. 2.h	CONSTRUCTION—SPECIAL REQUIREMENTS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.h(1)	Bonding	
Sec. 2.h(1)(a)	Bid Guarantee	
Sec. 2.h(1)(b)	Performance Bond	
Sec. 2.h(1)(c)	Payment Bond	
Sec. 2.h(1)(c)1	Less Than \$1 Million	
Sec. 2.h(1)(c)2	More Than \$1 Million but Less Than \$5 Million	
Sec. 2.h(1)(c)3	More Than \$5 Million	
Sec. 2.h(1)(d)	Acceptable Sureties	
Sec. 2.h(1)(e)	Reduced Bonding	
Sec. 2.h(1)(f)	Excessive Bonding	
Sec. 2.h(2)	Seismic Safety	
Sec. 2.h(3)	Value Engineering	
Sec. 2.h(4)	Equal Employment Opportunity	
Sec. 2.h(5)	Prevailing Wages	
Sec. 2.h(6)	Anti-Kickback	
Sec. 2.h(7)	Construction Safety	
Sec. 2.h(8)	Labor Neutrality	
Sec. 2.h(9)	Preference for U.S. Property—Buy America	
Sec. 2.h(10)	Accessibility	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER IV, Sec. 2.i	RESEARCH, DEVELOPMENT, DEPLOYMENT, AND SPECIAL STUDIES SPECIAL REQUIREMENTS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.i(1)	Patent Rights	
Sec. 2.i(2)	Rights in Data	
Sec. 2.i(2)(a)	Publication Restrictions	
Sec. 2.i(2)(b)	Distribution of Data	
Sec. 2.i(3)	Export Control	
Sec. 2.i(4)	Protection of Human Subjects	
Sec. 2.i(5)	Protection of Animals	

CHAPTER IV, Sec. 2.j	AUDIT SERVICES—SPECIAL REQUIREMENTS ACQUISITION OF PROPERTY AND SERVICES	CHECK
Sec. 2.j(1)	Single Audit Act	
Sec. 2.j(1)(a)	Organizational Conflicts of Interest	
Sec. 2.j(1)(b)	Eligibility of Costs	
Sec. 2.j(2)	Other Project Audits	
Sec. 2.j(2)(a)	Organizational Conflicts of Interest	
Sec. 2.j(2)(b)	Verification of Indirect Costs	
Sec. 2.j(2)(c)	Duplication of Services	
Sec. 2.j(2)(d)	Obtaining Indirect Cost Rates	
Sec. 2.j(2)(d)1	Governmental Entities	
Sec. 2.j(2)(d)2	Indian Tribes	
Sec. 2.j(2)(d)3	Educational Institutions	
Sec. 2.j(2)(d)4	Non-Profit Entities	
Sec. 2.j(2)(d)5	Private For-Profit Entities	
Sec. 2.j(2)(e)	Eligibility of Costs	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER V	SOURCES	CHECK
Sec. 1	Force Account	
Sec. 2	Shared Use	
Sec. 3	Joint Procurements	
Sec. 3.a	Use Encouraged	
Sec. 3.b	All FTA and Federal Requirements Apply	
Sec. 4	State or Local Government Purchasing Schedules or Purchasing Contracts	
Sec. 4.a	Use Encouraged	
Sec. 4.b	All FTA and Federal Requirements Apply	
Sec. 5	Federal Excess and Surplus Property	
Sec. 6	Federal Supply Schedules	
Sec. 6.a	Full Use of Federal Supply Schedules	
Sec. 6.b	Limited Use of Federal Supply Schedules	
Sec. 6.b(1)	Information Technology	
Sec. 6.b(2)	Major Disaster or Emergency Recovery	
Sec. 6.c	All FTA and Federal Requirements Apply	
Sec. 6.d	Competition and Price Reasonableness	
Sec. 7	Existing Contracts	
Sec. 7.a	Permissible Actions	
Sec. 7.a(1)	Exercise of Options	
Sec. 7.a(1)(a)	Consistency with the Underlying Contract	
Sec. 7.a(1)(b)	Price	
Sec. 7.a(1)(c)	Awards Treated as Sole Source Procurements	
Sec. 7.a(1)(c)1	Failure to Evaluate Options Before Awarding the Underlying Contract	
Sec. 7.a(1)(c)2	Negotiating a Lower Option Price	
Sec. 7.a(2)	Assignment of Contract Rights	
Sec. 7.a(2)(a)	Acquisition Through Assigned Contract Rights	
Sec. 7.a(2)(b)	Alternatives to Assigned Contract Rights	
Sec. 7.a(2)(b)1	Joint Procurements	
Sec. 7.a(2)(b)2	Intergovernmental Procurements	
Sec. 7.b	Impermissible Actions	
Sec. 7.b(1)	Improper Contract Expansion	
Sec. 7.b(2)	Cardinal Changes	
Sec. 7.b(2)(a)	Identifying Cardinal Changes	
Sec. 7.b(2)(b)	Changes in Quantity	
Sec. 7.b(2)(c)	Tests	
Sec. 7.b(2)(d)	Rolling Stock	
Sec. 7.b(2)(e)	Federal Procurement Standards	
Sec. 8	The Open Market	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER VI	OPEN MARKET PROCUREMENTS - COMPETITION	CHECK
Sec. 1	Competition Required	
Sec. 1.a	Solicitation by the Recipient	
Sec. 1.b	Unsolicited Proposals	
Sec. 1.b(1)	Receipt	
Sec. 1.b(2)	Adequate Description	
Sec. 1.b(3)	Interest in the Property or Services	
Sec. 1.b(3)	Adequate Opportunity to Compete	
Sec. 1.b(4)	Contract Award Based on Proposals Received	
Sec. 1.c	Prequalification	
Sec. 1.c(1)	Lists	
Sec. 1.c(2)	Sources	
Sec. 1.c(3)	Qualification Periods	
Sec. 2	Solicitation Requirements and Restrictions	
Sec. 2.a	Description of the Property or Services	
Sec. 2.a(1)	What to Include	
Sec. 2.a(2)	Quantities Limited to the Recipient's Actual Needs	
Sec. 2.a(3)	Brand Name or Equal	
Sec. 2.a(4)	Prohibitions	
Sec. 2.a(4)(a)	Excessive Qualifications	
Sec. 2.a(4)(b)	Unnecessary Experience	
Sec. 2.a(4)(c)	Improper Prequalification	
Sec. 2.a(4)(d)	Retainer Contracts	
Sec. 2.a(4)(e)	Excessive Bonding	
Sec. 2.a(4)(f)	Brand Name Only	
Sec. 2.a(4)(g)	In-State or Local Geographic Restrictions	
Sec. 2.a(4)(g) <u>1</u>	Architectural Engineering Services	
Sec. 2.a(4)(g) <u>2</u>	Licensing	
Sec. 2.a(4)(g) <u>3</u>	Major Disaster or Emergency Relief	
Sec. 2.a(4)(h)	Organizational Conflicts of Interest	
Sec. 2.a(4)(h) <u>1</u>	Occurrence	
Sec. 2.a(4)(h) <u>1.a</u>	Lack of Impartiality or Impaired Objectivity	
Sec. 2.a(4)(h) <u>1.b</u>	Unequal Access to Information	
Sec. 2.a(4)(h) <u>1.c</u>	Biased Ground Rules	
Sec. 2.a(4)(h) <u>2</u>	Remedies	
Sec. 2.a(4)(i)	Restraint of Trade	
Sec. 2.a(4)(j)	Arbitrary Action	
Sec. 2.b	Evaluation Factors	
Sec. 2.c	Contract Type Specified	
Sec. 2.c(1)	Typical Contract Types	
Sec. 2.c(1)(a)	Firm Fixed Price	
Sec. 2.c(1)(b)	Cost Reimbursement	
Sec. 2.c(2)	Prohibited or Restricted Contract Types	
Sec. 2.c(2)(a)	Cost Plus a Percentage of Cost—Prohibited	
Sec. 2.c(2)(b)	Time and Materials—Restricted	
Sec. 2.c(2)(b) <u>1</u>	When to Use	
Sec. 2.c(2)(b) <u>2</u>	Firm Ceiling Price	
Sec. 2.d	Other Federal Requirements Affecting the Property or Services to be Acquired	
Sec. 2.e	Other Federal Requirements Affecting the Bidder or Offeror and Contractor	
Sec. 2.f	Award to Other Than the Low Bidder or Offeror	
Sec. 2.g	Rejection of All Bids or Offers	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER VI, Sec. 3	OPEN MARKET PROCUREMENTS – METHODS OF COMPETITIVE PROCUREMENT	CHECK
Sec. 3.a	Micro-Purchases	
Sec. 3.a(1)	When Appropriate	
Sec. 3.a(2)	Procedures	
Sec. 3.a(2)(a)	Competition	
Sec. 3.a(2)(b)	Prohibited Divisions	
Sec. 3.a(2)(c)	Documentation	
Sec. 3.b	Small Purchases	
Sec. 3.b(1)	When Appropriate	
Sec. 3.b(2)	Procedures	
Sec. 3.b(2)(a)	Competition	
Sec. 3.b(2)(b)	Prohibited Divisions	
Sec. 3.c	Sealed Bids (Formal Advertising)	
Sec. 3.c(1)	When Appropriate	
Sec. 3.c(1)(a)	Precise Specifications	
Sec. 3.c(1)(b)	Adequate Sources	
Sec. 3.c(1)(c)	Fixed Price Contract	
Sec. 3.c(1)(d)	Price Determinative	
Sec. 3.c(1)(e)	Discussions Unnecessary	
Sec. 3.c(2)	Procurement Procedures	
Sec. 3.c(2)(a)	Publicity	
Sec. 3.c(2)(b)	Adequate Sources	
Sec. 3.c(2)(c)	Adequate Specifications	
Sec. 3.c(2)(d)	Sufficient Time	
Sec. 3.c(2)(e)	Public Opening	
Sec. 3.c(2)(f)	Fixed Price Contract	
Sec. 3.c(2)(g)	Rejection of Bids	
Sec. 3.d	Competitive Proposals (Request for Proposals)	
Sec. 3.d(1)	When Appropriate	
Sec. 3.d(1)(a)	Type of Specifications	
Sec. 3.d(1)(b)	Uncertain Number of Sources	
Sec. 3.d(1)(c)	Price Alone Not Determinative	
Sec. 3.d(1)(d)	Discussions Expected	
Sec. 3.d(2)	Procurement Procedures	
Sec. 3.d(2)(a)	Publicity	
Sec. 3.d(2)(b)	Evaluation Factors	
Sec. 3.d(2)(c)	Adequate Sources	
Sec. 3.d(2)(d)	Evaluation Method	
Sec. 3.d(2)(e)	Price and Other Factors	
Sec. 3.d(2)(f)	Best Value	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER VI	OPEN MARKET PROCUREMENTS - METHODS OF COMPETITIVE PROCUREMENT	CHECK
Sec. 3.e	Two-Step Procurement Procedures	
Sec. 3.e(1)	Review of Technical Qualifications and Approach	
Sec. 3.e(2)	Review of Bids and Proposals Submitted by Qualified Prospective Contractors	
Sec. 3.f	Architectural Engineering Services (A&E) and Other Services	
Sec. 3.f(1)	Qualification-Based Procurement Procedures Required	
Sec. 3.f(2)	Qualifications-Based Procurement Procedures Prohibited	
Sec. 3.f(3)	Qualifications-Based Procurement Procedures	
Sec. 3.f(3)(a)	Qualifications	
Sec. 3.f(3)(b)	Price	
Sec. 3.f(3)(c)	Most Qualified	
Sec. 3.f(3)(d)	Next Most Qualified	
Sec. 3.f(4)	Effect of State Laws	
Sec. 3.f(5)	Audits and Indirect Costs	
Sec. 3.f(5)(a)	Performance of Audits	
Sec. 3.f(5)(b)	Indirect Cost Rates	
Sec. 3.f(5)(c)	Application of Rates	
Sec. 3.f(5)(d)	Prenotification: Confidentiality of Data	
Sec. 3.g	Design-Bid-Build	
Sec. 3.g(1)	Design Services	
Sec. 3.g(2)	Construction	
Sec. 3.h	Design-Build	
Sec. 3.h(1)	Procurement Method	
Sec. 3.h(1)(a)	Construction Predominant	
Sec. 3.h(1)(b)	Design Services Predominant	
Sec. 3.h(2)	Selection Processes	
Sec. 3.h(2)(a)	One-Step Method	
Sec. 3.h(2)(b)	Two-Step Method	
Sec. 3.h(2)(b)1	Review of Technical Qualifications and Approach	
Sec. 3.h(2)(b)2	Review of Complete Proposals	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER VI, Sec. 3.h	OPEN MARKET PROCUREMENTS - METHODS OF PROCUREMENT OTHER THAN FULL AND OPEN COMPETITION	CHECK
Sec. 3.i(1)	When Appropriate	
Sec. 3.i(1)(a)	Competition Adequacy	
Sec. 3.i(1)(b)	Sole Source	
Sec. 3.i(1)(b)1	Unique Capability and Availability	
Sec. 3.i(1)(b)1.a	Unique or Innovative Concept	
Sec. 3.i(1)(b)1.b	Patents or Restricted Data Rights	
Sec. 3.i(1)(b)1.c	Substantial Duplication Costs	
Sec. 3.i(1)(b)1.d	Unacceptable Delay	
Sec. 3.i(1)(b)2	Single Bid or Proposal	
Sec. 3.i(1)(b)2.a	Adequate Competition	
Sec. 3.i(1)(b)2.b	Inadequate Competition	
Sec. 3.i(1)(c)	Unusual and Compelling Urgency	
Sec. 3.i(1)(d)	Associated Capital Maintenance Item Exception Repealed	
Sec. 3.i(1)(e)	Authorized by FTA	
Sec. 3.i(1)(e)1	Consortium, Joint Venture, Team, Partnership	
Sec. 3.i(1)(e)2	FAR Standards	
Sec. 3.i(1)(e)2.a	Statutory Authorization or Requirement	
Sec. 3.i(1)(e)2.b	National Emergency	
Sec. 3.i(1)(e)2.c	Research	
Sec. 3.i(1)(e)2.d	Protests, Disputes, Claims, Litigation	
Sec. 3.i(1)(e)2.e	International Agreements	
Sec. 3.i(1)(e)2.f	National Security	
Sec. 3.i(1)(e)2.g	Public Interest	
Sec. 3.i(2)	When Prohibited	
Sec. 3.i(2)(a)	Failure to Plan	
Sec. 3.i(2)(b)	Limited Availability of Federal Assistance	
Sec. 3.i(3)	Procurement Procedures	
Sec. 3.i(3)(a)	Potential Sources	
Sec. 3.i(3)(b)	Sole Source Justification	
Sec. 3.i(3)(c)	Cost Analysis	
Sec. 3.i(3)(d)	Preaward Review	

THIRD PARTY CONTRACTING CHECKLISTS

CHAPTER VI	OPEN MARKET PROCUREMENTS - EVALUATIONS	CHECK
Sec. 4	Eligible Costs	
Sec. 5	Incentive Costs and Payments	
Sec. 6	Cost and Price Analysis	
Sec. 6.a	Cost Analysis	
Sec. 6.a(1)	Federal Cost Principles	
Sec. 6.a(2)	Establishing Indirect Cost Rates	
Sec. 6.a(2)(a)	Contracts of \$5 Million or Less	
Sec. 6.a(2)(b)	Contracts Exceeding \$5 Million	
Sec. 6.a(3)	Profit	
Sec. 6.b	Price Analysis	
Sec. 6.c	Guidance on Cost and Price Analysis	
Sec. 7	Evaluations	
Sec. 7.a	General	
Sec. 7.b	Options	
Sec. 7.b(1)	Evaluation Required	
Sec. 7.b(2)	Evaluation Not Required	
Sec.7.c	Evaluators	

CHAPTER VI	OPEN MARKET PROCUREMENTS CONTRACT AWARDS - REJECTIONS OF BIDS AND PROPOSALS	CHECK
Sec. 8	Contract Award	
Sec. 8.a	Award to Other Than the Lowest Bidder or Offeror	
Sec. 8.b	Award to Only a Responsible Bidder or Offeror	
Sec. 8.b(1)	Integrity and Ethics	
Sec. 8.b(2)	Debarment and Suspension	
Sec. 8.b(3)	Affirmative Action and DBE	
Sec. 8.b(4)	Public Policy	
Sec. 8.b(5)	Administrative and Technical Capacity	
Sec. 8.b(6)	Licensing and Taxes	
Sec. 8.b(7)	Financial Resources	
Sec. 8.b(8)	Production Capability	
Sec. 8.b(9)	Timeliness	
Sec. 8.b(10)	Performance Record	
Sec. 8.b(10)(a)	Current Performance	
Sec. 8.b(10)(b)	Past Performance	
Sec. 8.b(10)(b)1	Sufficient Resources	
Sec. 8.b(10)(b)2	Adequate Past Experience	
Sec. 8.b(10)(b)3	Any Past Deficiencies Not the Fault of the Bidder or Offeror	
Sec. 8.c	Rejection of Bids and Proposals	
Sec. 8.c(1)	Governmental Recipients	
Sec. 8.c(2)	Non-Governmental Recipients	
Sec. 8.d	Extent and Limits of Contract Award	



SE-214 Selection Committee – Confidentiality and Conflict of Interest Policy

AGENCY: CHARLESTON AREA REGIONAL TRANSPORTATION AUTHORITY (CARTA)

PROJECT NAME: _____

PROJECT NO.: _____

It is the policy of the State, the Agency, and this Selection Committee to abide by all laws, regulations, and policies regarding the avoidance of conflict of interest and the preservation of confidentiality. In order to assure a fair selection process that potential and actual offerors and the public trust, the Selection Committee for this project adopts the following policy:

CONFIDENTIALITY:

Prior to the issuance of an award or notification of intent to award, whichever is earlier, Selection Committee members shall not engage in conduct that—

- (1) Favors one offeror over another;
- (2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;
- (3) Reveals an offeror's price without that offeror's permission. However, the procurement officer may inform an offeror that its price is considered by the State to be too high, or too low;
- (4) Reveals the names of individuals providing reference information about an offeror's past performance;
or
- (5) Knowingly furnishes source selection information to anyone other than the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (a) proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (b) source selection plans, (c) technical evaluation plans, (d) technical evaluations of proposals, (e) cost or price evaluations of proposals, (f) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (g) rankings of responses, proposals, or competitors, (h) reports, evaluations of source selection panels or evaluation panels, (i) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

CONFLICT OF INTEREST:

No conflict of interest, actual or apparent, shall exist, for any member of the Selection Committee due to (1) an ownership interest in an offeror held by the member or his/her immediate family, (2) an employment relationship with an offeror by the member or his/her immediate family, or (3) any other reason which may give rise to questions concerning the member's ability to be fair and impartial in his/her decisions.

I have read the confidentiality and conflict of interest policy for this project and I agree to abide with that policy.

CONFLICT OF INTEREST CERTIFICATION

To the best of my information and belief, I currently do not have an actual conflict of interest that would prevent me from fairly and impartially performing my duties in this acquisition. To the best of my information and belief, I currently do not have an apparent conflict of interest that, in the eyes of a reasonable person, may give the appearance of the possibility of impartiality in the performance of my duties in this acquisition. I will avoid conflicts of interest by withdrawing from the Selection Committee if the Agency receives any proposal involving organizations where:

1. To the best of my knowledge and belief, I or my spouse, minor child, or partner have a financial interest;
2. I am now, or have been, an officer, director, trustee, partner, consultant, or employee or otherwise similarly associated;
3. There exists any arrangement concerning my prospective employment, financial interest, or other similar association;
4. I have provided assistance in any form to the offeror in the preparation of their proposal;
5. I am a supervisor of anyone who is subject to one of the above listed conditions.

CONFIDENTIALITY OF INFORMATION CERTIFICATION

I fully understand the confidential nature of the procurement process, including the evaluation of proposals and the selection of potential contractors. I agree to:

1. Return all evaluation-related materials to the Agency Project Manager;
2. Refuse to discuss these materials or the evaluation proceedings with any individual not directly involved in the evaluation; and,
3. Refer all inquiries or contacts concerning any aspect of the procurement process to the Chair of the Selection Committee.

I understand that an actual or apparent conflict of interest or breach of confidentiality, however innocent, may result in my removal from the Selection Committee.

Name (Print)

Signature

Date

Cost Analysis Form

COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts) (See Instructions below)	
SOLICITATION #	SUPPLIES AND/OR SERVICES TO BE FURNISHED
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE Sarah R. Whitt, Office Manager & Procurement Officer CARTA 36 John Street Charleston, SC 29403	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

DETAIL DESCRIPTION OF COST ELEMENTS							
1. DIRECT MATERIAL			Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis	
A. PURCHASED PARTS							
B. SUBCONTRACTED ITEMS							
C. OTHER - (1) RAW MATERIAL							
(2) STANDARD COMMERCIAL ITEMS							
<i>TOTAL DIRECT MATERIAL</i>							
2. MATERIAL OVERHEAD (RATE % x \$ BASE *)							
3. DIRECT LABOR		ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
<i>TOTAL DIRECT LABOR</i>							
4. LABOR OVERHEAD				Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
OH Rate							
X BASE (labor total above)							
<i>TOTAL LABOR OVERHEAD</i>							
5. OTHER DIRECT COSTS			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance	
A. SPECIAL TOOLING/EQUIPMENT							
<i>TOTAL SPECIAL TOOLING/EQUIPMENT</i>							
B. TRAVEL							
(1) TRANSPORTATION							
(2) PER DIEM OR SUBSISTENCE							
<i>TOTAL TRAVEL</i>							

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
TOTAL INDIVIDUAL CONSULTANT SERVICES				
D. OTHER				
TOTAL OTHER				
E. SUBTOTAL DIRECT COST AND OVERHEAD				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. SUBTOTAL ESTIMATED COST				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. SUBTOTAL ESTIMATED COST				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

ANALYSIS GUIDELINES

1. DIRECT MATERIAL

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

2. MATERIAL OVERHEAD

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

3. DIRECT LABOR

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

4. LABOR OVERHEAD

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

5. OTHER DIRECT COSTS

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

6. GENERAL AND ADMINISTRATIVE EXPENSE

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

7. ROYALTIES

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties,

8. SUBTOTAL ESTIMATED COST

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY

Analyze the offerors' supporting calculations and compare to known standards.

10. SUBTOTAL ESTIMATED COST

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

11. FEE OR PROFIT

Review the total of all proposed Fees or Profit.

12. TOTAL ESTIMATED COST AND FEE OR PROFIT

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

13. DISCOUNTS

Review basis for Discounts and range between offers.

ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.

Fair and Reasonable Price Determination

FAIR AND REASONABLE PRICE DETERMINATION

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more:

- Found reasonable on recent purchase.
- Obtained from current price list.
- Obtained from current catalog.
- Commercial market sales price from advertisements.
- Similar in related industry.
- Personal knowledge of item procured.
- Regulated rate (utility).
- Other.

Comments:

Copy of purchase order, quotes, catalog page, price list, etc. is attached.

Purchasing Agent

Date

Independent Cost Estimate

Contract Type:

Date of Estimate:

Description of Goods / Service:

Method of Obtaining the Estimate:

I have obtained the following estimate from....

- Published Price List / Past pricing (date)_____
- Engineering or technical estimate
- Independent Third Party estimate
- Other (specify)_____

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be: \$_____. Details are shown below.

Cost of Standard Items

Product	Cost (\$/ea)	Cost (\$/ea)	Notes / Data Source
	Delivered	No Freight	

A

Cost of Services, Repairs, or Non-Standard Items

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated overhead	SG&A	Profit	Total

B

Signature of Preparer:

The preceding cost estimate was obtained or prepared by: _____

[For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.]

Piggybacking Checklist

Definition: *Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.* ("FTA Dear Colleague" letter, October 1, 1998).

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14) (i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See BPPM Section 9.2.1.		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3—*Joint Procurements of Rolling Stock and "Piggybacking,"*

Price Analysis

PO / Contract: _____

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

____ Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)

____ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)

____ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).

____ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

DATE: _____

PREPARED BY: _____

Attachments:

PRICING GUIDE FOR FTA GRANTEES

This document is intended to serve as a general guide and reference publication for FTA Grantee's requirements, and purchasing people. It is not directive in nature or all-inclusive. It is intended to be used as a tool in helping the Grantees obtain more for their contracting dollar.

<u>SECTION</u>		<u>Page</u>
I.	INTRODUCTION	3
	Policy	3
	Pricing Methods	4
	Definitions	4
II.	PRICE ANALYSIS	9
III.	COST ANALYSIS	12
IV.	PRICING TOOLS	13
	Tools for Price Analysis	13
	Tools for Cost Analysis	13
V.	UNDER \$2,500	15
	Policy	15
	Pricing	15
	Documentation	15
VI.	\$2,500 - \$100,000	16
	Policy	16
	Pricing	16
	Documentation	16
VII.	\$100,000 – OVER	17
	Policy	17
	Pricing	17

	Tips	17
APPENDIX A	Multi-Year and Options in Service Contracts	19
APPENDIX B	Contract Cost Principles	22
APPENDIX C	Negotiation & Documentation	24
APPENDIX D	Modifications	47
APPENDIX E	Pricing Examples	51
APPENDIX F	Evaluation and Negotiation of Fixed Price Architect-Engineer Contracts	60

PRICING GUIDE FOR FTA GRANTEES

I. INTRODUCTION

Pricing is a word that **means a lot of things to a lot of people**. An **individual involved in Large Dollar Acquisitions** may think of pricing as **meaning cost analysis** and certified cost and pricing data. An **individual involved in smaller contracting** actions, on the other hand, may take pricing to **mean price analysis**. In other words, personnel think of pricing in terms that relate to the dollar categories and complexities of the purchases they make.

In the context of **this guide, pricing means** simply the **minimum actions** you must take to **determine** and document a fair and **reasonable price**. The degree and complexity of these actions vary with dollar amount and type of purchase. **This guide** is written for **purchasing and requirement personnel** that deal with purchases on a frequent basis. There is very little information provided for noncompetitive **purchases over \$500,000**. Once you reach this level, the possibility for very complex pricing is so great that you should be **dealing with a price analyst**.

This guide is designed to **aid contracting personnel** in solving day-to-day pricing problems. It is simple, straightforward, and easy to use. It is **not all-inclusive**. For more extensive information it is suggested you review Armed Services Pricing Manual (ASPM 1 ^(U)). The guide serves as a **training aid** for the less experienced, a **"memory jogger"** for the more experienced buyer, and a **quick reference** document for everyone.

The format of the guide is structured in two ways: by dollar category and by pricing method. In each case some background is provided in addition to how to make the purchase. Appendices are provided which include examples of pricing scenarios and information for other than routine purchases.

POLICY

Some form of **pricing** is **required on every contracting action**. The nature of **Sealed Bid** Purchases makes the required actions so simple that some people don't even think of them as "pricing." Award must be made to the responsible bidder submitting the lowest responsive bid. By **comparing bids** to see which is the lowest, you are accomplishing a form of price analysis. Even if you have only one bid, your job is still fairly simple. Unless you have justification for rejecting the bid and/or canceling the solicitation, you make an award, provided the price is reasonable and you have enough money. Contracting officers should exercise extreme care to insure that a mistake in bid has not occurred.

Negotiated contracts should be **based on adequate price competition whenever possible**. Those that are not, are subject to some other form of price analysis or a combination of price and cost analysis. You will probably be doing the pricing job without the assistance of specialists. As a result, you should know about available sources, past prices and quantities, delivery and production schedules, specifications, market prices, discounts, terms of sale, and quality (including the acceptability of past purchases to the users). **You should also know as much as possible about what you are buying**. Examine the product, look at a picture of it, and talk about it with someone who does know. You won't get this experience all at once or for a single purchase, but this kind of effort is necessary for effective pricing of negotiated purchases.

Offers submitted in the absence of adequate price competition are **frequently lowered by analysis and negotiation**. While this is a proper goal in most instances, the **attitude that every offer analyzed must be reduced is wrong**. Such an attitude is obvious and a company may anticipate it when preparing future offers. Also, it is both frustrating and ineffective to negotiate from such a position; and this bias can destroy the mutual

respect (between contractor and the Grantee and among various Grantee specialists involved) which is so necessary to successful negotiations. The **objective of your analysis** of an offer is to **determine if the price offered is reasonable**.

PRICING METHODS

There are **two accepted methods** of pricing contract actions: **price analysis**, which is simply a comparative process involving total price, and **cost analysis**, which is an element-by-element analysis of the costs which make up the total price.

DEFINITIONS

Acquisition Planning: The process by which the efforts of all personnel responsible for acquisitions are coordinated and integrated through a comprehensive plan for fulfilling the Grantee's needs in a timely manner and at a reasonable cost. Includes developing the overall strategy for managing the acquisitions.

Actual Cost: A cost which has been incurred and can be substantiated with factual documentation.

Adequate Price Competition: This condition exists when two or more responsible offerors compete independently and submit proposals deemed responsive to a solicitation, and there is no evidence that competition was restricted or that the lowest price is unreasonable.

Allocable Cost: A cost is allocable if it is assignable or chargeable to one or more elements of work or final cost objectives (accounts, contracts, etc.) according to the relative benefits received from those objectives.

Allowable Cost: Cost which is reasonable, allocable, and in consonance with 48 CFR Chapter 1 Part 31 or otherwise conforms to accepted accounting principles, specific limitations, or exclusions set forth or agreed to between contracting parties.

Commercial Item: Any item of supply or service that is regularly used for other than Government purposes and is sold or traded in the course of conducting normal business operations.

Competition: An environment of varying dimensions relating to buy-sell relationships in which the buyer induces, stimulates, or relies on conditions in the marketplace that cause independent sellers to contend confidently for the award of a contract.

Competitive Range: The category in which the contracting officer places all offers having a reasonable chance of being selected for award. The determination as to which offers are in this range is based on price or cost, technical, and other salient factors. If there is any doubt as to whether or not an offer should be included, it should be resolved by including the offer in this range.

Contract: A term used to describe a variety of agreements or orders for the procurement of supplies or services.

Contract Pricing: A series of actions used to obtain, assess, verify, and adjust cost or pricing information and to record the steps taken to ascertain that prices agreed to have been determined fair and reasonable.

Cost Analysis: The evaluation of each cost element which makes up a total price. This evaluation may include obtaining certified cost or pricing data, the appropriate verification of cost data, evaluation and projection of specific cost elements to determine cost necessity, allowance for contingencies, and the basis used for allocation of overhead costs.

Cost of Pricing Data: Data consisting of all facts existing up to the time of agreement on price, which prudent buyers and sellers would expect to have a significant effect on price negotiations. Being factual, these data are types that can be verified. They do not reflect the accuracy of the contractor's judgment about estimated future costs or projections; they do, however, reflect the data upon which the contractor based his judgment.

Defective Cost or Pricing Data: Certified cost or pricing data subsequently found to have been inaccurate, incomplete, or noncurrent as of the effective date of the certificate. In this case, the Grantee is entitled to an adjustment of the negotiated price, including profit or fee, to recoup any significant sum by which the price was increased because of the defective data, provided the data were relied upon by the Grantee.

Direct Cost: Any cost that is specifically identified with a particular final cost objective (contract, account, etc.) but not necessarily limited to items that are incorporated in the end product as material or labor.

Economic Price Adjustment: An alteration permitted and specified by contract provisions for the upward or downward revision of a stated contract price upon the occurrence of certain contingencies that are defined in the contract.

Established Catalog Price: A price included in a catalog, price list, schedule, or other form that (1) is regularly maintained by a manufacturer or vendor, (2) is published or made available for inspection by customers, and (3) states prices at which sales are currently or were last made to a significant number of buyers from the general public.

Fair and Reasonable Price: A price that is fair to both parties, considering the agreed-upon conditions, promised quality, and timeliness of contract performance. Although generally a fair and reasonable price is a function of the law of supply and demand, there are statutory, regulatory, and judgmental limits on the concept.

General and Administrative: Expressed normally as G&A. Indirect expenses, including a company's general and executive offices, executive compensation, the cost of staff services such as legal, accounting, public relations, financial and similar expenses, and other miscellaneous expenses related to the overall business.

Incremental Funding: The obligation of funds to a contract containing a total price or estimated cost, in periodic installments against prescribed performance goals or objectives.

Indirect Cost: Any cost not directly identified with a single final cost objective but identified with two or more final cost objectives, or with at least one intermediate cost objective. Also referred to as overhead or burden.

Learning Curve: A tool of calculation used primarily to project resource requirements, in terms of direct manufacturing labor hours or the quantity of material (for this purpose, usually referred to as an improvement curve) required for a production run. Used interchangeably with the term improvement curve, the concept of a learner's curve was adopted from the observation that individuals who perform repetitive tasks exhibit a rate of improvement due to increased manual dexterity. Learning or improvement curve theories include the following:

Unit Curve Theory: As the total quantity of units produced doubles, the cost per unit decreases.

Cumulative Average Theory: As the total quantity of units doubles, the average cost per unit decreases by some constant percentage (the rate of learning).

Multi-year Contracting: Means contracts covering more than 1-year's, but not in excess of 5-year's, requirements. Each program year is annually budgeted and funded and, at the time of award, funds need only to

have been available for the first year. The contractor is protected against loss resulting from cancellation by contract provisions which allow reimbursement of costs included in the cancellation ceiling.

Negotiation: In its more formal context, one of the major methods of procurement. Employed under certain permissive circumstances when sealed bidding is determined to be infeasible and impractical. In its more general context, a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

Option: Means a unilateral right in a contract by which, for a specified time, a Grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

Price: A monetary amount given, received, or asked in exchange for property or services, expressed in terms of a single item or unit of measure for such property or services.

Price Analysis: The comparative process of evaluating total price without regard to the individual elements that make up the total price.

Pricing Arrangements: An agreement between contracting parties for the payment of amounts for specified performance. Usually expressed in terms of a specific cost reimbursement type arrangement.

Pre-Negotiation Memorandum: The document that identifies the steps taken by the Grantee personnel to analyze the contractor's proposal and identify issues to be discussed. Used as a test to establish the Grantee's position during negotiations. Called the PM.

Price Negotiation Memorandum: The document that relates the story of the negotiation. First it is a sales document that establishes the reasonableness of the agreement reached with the successful offeror. Second, it is the permanent record of the decisions the negotiator made in establishing that the price was fair and reasonable. Called the PNM.

Reasonable Cost: A cost is reasonable if, in its nature or amount, it does not exceed what would be incurred by an ordinarily prudent person in the conduct of competitive business.

Value Analysis: A systematic and objective evaluation of the function of a product and its related cost. Its purpose is to ensure optimum value. As a pricing tool, it provides insight into the inherent worth of a product.

Visual Analysis: The visual inspection of an item or its drawings, from which a general estimate may be made about probable value. In most instances, visual analysis deals with obvious external features.

SECTION II

PRICE ANALYSIS

Price Analysis is the most used method to determine a fair and reasonable price because it is **less complex and time consuming** than other methods. A **form of price analysis** is **used on every purchasing action**. In order of preference the accepted forms of price analysis are:

- (1) Adequate price competition
- (2) Prices set by law or regulation
- (3) Established catalog prices and market prices
- (4) Comparison to previous purchases
- (5) Comparison to a valid Grantee independent estimate
- (6) Value analysis

Each form of price analysis is discussed in the following paragraphs.

Adequate price competition is dependent upon the following:

- (1) **At least two** responsible **offerors** respond to a solicitation.
- (2) Each offeror must be **able to satisfy the requirements** of the solicitation.
- (3) The offerors must **independently contend** for a contract to be awarded to the **responsive and responsible** offeror submitting the lowest evaluated price.
- (4) Each offeror must submit **priced offers** responsive **to the expressed requirements** of the solicitation.

If the four conditions just outlined are met, price competition is adequate unless:

- (1) The solicitation was made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete.
- (2) The low competitor has such an advantage over other competitors that he/she is practically immune to the stimulus of competition.
- (3) The lowest final price is not reasonable, and this finding can be supported by facts.

Prices set by Law or Regulation are fair and reasonable. Acquire a copy of the rate schedules set by the applicable law or regulation. Once these schedules are **obtained, verify** that **they apply** to your situation and that you are being charged the correct price. For utility contracts, this policy applies only to prices prescribed by an effective, independent regulatory body.

Established catalog prices are dependent on the following:

- (1) Established **catalog prices exist**.
- (2) The items are **commercial in nature**.
- (3) They are **sold in substantial quantities**.
- (4) They are sold **to the general public**.

The idea behind catalog prices is that a commercial demand exists and suppliers have been developed to meet that demand. We are just trying to **ensure** we get **at least the same price as other buyers** in the market for these items. You need to be sure that the catalog is not simply an internal pricing document. Request a copy of the document or at least the page on which the price appears.

Established market prices are based on the same principle as catalog prices except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers **free to bargain**. These **prices must be verified by buyers** and sellers who are **independent of the offeror**. If you do not know the names of other commercial buyers and sellers, you may obtain this information from the offeror.

Comparison to previous purchases. Changes in **quantity, quality, delivery schedules**, and the economy cause price variations. Each **differing situation must be analyzed** through trend analysis. Also ensure that the previous price was fair and reasonable. This determination must be based upon a physical review of the documentation contained in the previous files.

Comparison to a valid independent estimate. **Verify the facts, assumptions, and judgments** used. Have the estimator give you the method and data **used in developing the estimate**. For example, did prices come from current catalogs or industry standards? Be sure that you feel comfortable with the estimate before relying on it as a basis for determining a price to be fair and reasonable.

Value analysis requires you to look at the item and the function it performs so you can **determine its worth**. The decision of price reasonableness remains with the contracting officer. Also, contact the requiring activity for their expertise so they can participate in making the decision.

Use the chart on page 10 for making your decision that the price is fair and reasonable.

"BASIS FOR DETERMINING FAIR[NESS] AND REASONABLENESS"

<p>Adequate Price Competition Indicates Reasonableness</p> <p style="text-align: right;">Page 8</p>	<table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> </table>		
<p>Prices Established by Law or Regulation Indicate Reasonableness</p> <p style="text-align: right;">Page 8</p>	<table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> </table>		
<p>Catalog or Market Prices Indicate Reasonableness</p> <p style="text-align: right;">Page 8</p>	<table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> </table>		
<p>Previous Price for Same or Similar Terms Indicate Reasonableness</p> <p style="text-align: right;">Page 9</p>	<table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> </table>		
<p>Valid Independent Estimate Indicates Reasonableness</p> <p style="text-align: right;">Page 9</p>	<table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> </table>		
<p>Value Analysis Indicates Reasonableness</p> <p style="text-align: right;">Page 9</p>	<table border="1"> <tr><td> </td></tr> <tr><td> </td></tr> </table>		
<p>Cost Analysis Indicates Reasonableness</p> <p style="text-align: right;">Sec III Page 11</p>	<table border="1"> <tr><td> </td></tr> </table>		

Yes, Make Award

SECTION III

COST ANALYSIS

Cost Analysis. **Cost analysis** is **more complex** and **time-consuming** than price analysis. As such, it should be used when price analysis alone is not sufficient in determining the price to be fair and reasonable. Essentially, **cost analysis**, as distinguished from price analysis, is the **process of**:

1. **Obtaining cost or pricing** data (a breakdown of costs) from prospective contractors or subcontractors,
2. **Verifying and evaluating** the accuracy and allowability of cost data; and
3. **Projecting cost data** from known to estimated costs to show the effect on overall prices.

A contractor's proposal should include comparisons of current estimated costs with:

- (1) Actual costs previously incurred.
- (2) The most recent cost estimate for the same or similar items or with a series of prior estimates.
- (3) Current cost estimates from other possible sources providing the same or similar product or service.
- (4) Independent forecasts of future costs.

In doing a cost analysis you may only want to **analyze selected cost elements** of a contractor's offer. For example, you may want to take a look at costs for material and overhead, but not labor. **First obtain a breakdown of cost elements** from the offeror. Determine which ones you want to analyze, and then **secure assistance** from the using activity. After receiving these inputs you can proceed to analyze these selected costs using the pricing tools in section IV. **Your analysis will result** in a determination of **fair and reasonable price** or serve as a **basis for negotiations**.

PRICING TOOLS

Certain tools help accomplish pricing tasks. In doing price analysis you use competitors' catalogs, current newspaper advertisements, or almost anything that will give you a basis for comparison. In doing cost analysis you use technical evaluations, audits, certified or noncertified cost and pricing data.

TOOLS FOR PRICE ANALYSIS

Tools used for comparing prices are:

- (1) **Competitors' Catalogs.** (Penney's, Sears, or Ward's, etc.) Be sure you are comparing catalogs for the same time frame.
- (2) **Newspaper Advertisements.** Make sure the ad is current.
- (3) **Government Catalogs.** Federal Supply Schedules may be used for price comparison even though you may not be able to fulfill your requirement through them.
- (4) **Industrial Catalogs.** The National Mechanical Contractor Estimator (NMCE) is an excellent source for pricing mechanical items.
- (5) **Government Price Index.** Use this method as a comparison approach to price and cost analysis. An index can be used with historical prices to analyze, compare, and predict current prices for a specific product or service.

TOOLS FOR COST ANALYSIS

In addition to the tools for price analysis, use the following tools for cost analysis.

Technical Evaluation. You can use this method when evaluating offers by either price or cost analysis. While the technical evaluation is not directly related to price, it involves your assessment of quantitative and qualitative factors which influence the offered price. Technical evaluations **allow you to evaluate the functions that cause costs.** Technically trained and experienced personnel are in the **best position to assist** you in the **analysis of hours, quantities, tooling, testing, head counts, productivity,** and similar factors.

Accounting records can tell you the cost of a job but **are of limited value** in **determining reasonableness.** Technical skills and judgments are required to determine reasonableness and necessity of those costs.

When a **technical evaluation** is required prior to negotiations, it **should address** such things as:

- (1) An estimate of **necessary labor-hours** with an indication as to where adjustments are desirable.
- (2) **Reasonableness of proposed material** type, quantity, and necessity.
- (3) The **need for acquiring equipment** and which equipment should be considered as general purpose or unique to the performance of a particular contract.
- (4) The **possibility** and availability of **Grantee Furnished Property.**
- (5) Number, location, and **need for** any Grantee funded **trips** by contractor personnel.
- (6) A summary statement as to whether or not **labor, material, travel,** and other cost elements **are reasonable** along with the evaluator's rationale.

Auditor Pricing Support provides **verification of proposed costs** and an examination of the vendor's estimates; for example, certain categories of materials, salaries of contractor personnel, or the actual cost **elements** may have **contributed** to an **overhead rate.** The auditor should also tell you of all **prohibited costs** included in the contract's proposal.

UNDER \$2,500 MICRO-PURCHASE

POLICY

Purchases below this threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. Such purchases are exempt from the Buy America requirements. There should be equitable distribution among qualified suppliers (in the local area) and no splitting of procurements to avoid competition.

PRICING

Normally small purchases should follow this format:

- (1) Receive requirement and ensure funds are available.
- (2) Request quotation from vendor/supplier.
- (3) Make determination that price is fair and reasonable.
- (4) Place order.

There are times, however, when these purchases vary from the norm. When these instances occur, judgment must be exercised in choosing a course of action. Action to verify price reasonableness need be taken only if the contracting officer or buyer suspects or has reason to believe the price may not be reasonable. **If a price is suspect, award should not be made until all doubt is removed.**

DOCUMENTATION

Minimum documentation is required. A determination that the price is fair and reasonable and how this determination was made.

\$2,500-\$100,000 POLICY

If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

PRICING

Normal purchase action should follow these steps:

- (1) Receive funded requirement.
- (2) Obtain quotation/proposal.
- (3) Analyze quotation/proposal(s).
- (4) Award based on fairness and reasonableness.

See page 8 for assistance in making your decision that the price is fair and reasonable.

DOCUMENTATION

Be sure the **rationale** for your **purchase price is well documented**. Documentation may **range from annotating abstracts** when award is based on competition **to developing a formal price negotiation memorandum (PNM)**.

\$100,000-OVER POLICY

Cost/price analysis is required to the extent necessary to ensure a fair and reasonable price.

PRICING

Some form of analysis is necessary to determine a fair and reasonable price. The order of preference for this analysis is as follows:

Price Analysis (see page 8 of this guide).

- (1) Adequate price competition.
- (2) Prices set by law or regulation.
- (3) Established catalog or market prices.
- (4) Comparison to previous prices.
- (5) Comparison to valid independent estimate.
- (6) Value analysis.

Cost Analysis.

Cost Analysis (see page 11 of this Guide). First, **ask the offeror for a breakdown** of all **proposed costs**. Have him group cost breakdown items by major category (i.e., direct and indirect). Likewise, when your contracting officer thinks it's best, ask for a **detailed Grantee independent cost breakdown**. Also **get supporting data** on those **elements** you think are **questionable**. The last step is to perform cost analysis on those elements you found questionable.

In-Depth Cost Analysis. Use this method **when you can't determine a fair and reasonable price any other way**. Obtain cost and pricing data from the offeror. In performing in-depth cost analysis you may require certified cost or pricing data for contracts and modifications in excess of \$100,000. You should **ask for an audit pricing** report for pricing **larger purchase actions**, (i.e., in excess of \$500,000). You can also request audit pricing support when you believe it is necessary.

-TIPS-

Get Grantee and offerors cost breakdowns in the same format for ease of comparison.

Check breakdown to **verify** if:

the **elements add up** to the total price
you **understand the need** for each element of cost
the **same thing does not appear in more than one** statement of cost
the general format **compares** with breakdown for **similar items** or services from the same source.

Don't disclose offers received from contractors on negotiated buys.

OPTIONS AND MULTI-YEAR CONTRACTING

FTA Circular 4220 1D states Grantees may included options in contracts under certain circumstances (see FTA C 4220.1D, paragraph. 9g).

This **ensures continuity of operation** and avoids the costs of disrupted support. In addition, multi-year contracts may be written for certain types of requirements such as computer maintenance, bus service, and vehicle purchases. In either case, there are some **special pricing techniques** that **you must consider in the second and subsequent years** of option year and multi-year contracts. Contract option and multi-year pricing should be covered in the price adjustment clauses. The **option years** and the **out years of multi-year** contracts should be **evaluated in the award process** and prices established or fixed at award time.

A Grantee may **exercise an option** only after making a **written determination**, signed by the appropriate official and placed in the contract file, that the exercise of the option is the **most advantageous method of fulfilling the Grantee's need**, considering price and other factors. Likewise to fund the out years or a multi-year contract a similar determination should be made.

The multi-year and option contract clause on price adjustment may be applicable to the base period as well as subsequent periods when: (1) an increased or decreased wage determination is issued by the Department of Labor or (2) an amendment to the Fair Labor Standards Act which affects the minimum wage is enacted after the contract is awarded.

PRICE ADJUSTMENT

There are **several characteristics of price adjustment** provisions that should be considered in adjustments. Normally, a price is established for the base and subsequent years of both option and multi-year contracts. Therefore, in the subsequent years, the **contractor is only allowed adjustments to clearly defined cost areas**. Any adjustment is limited to increases and decreases identified in the contract, such as wages or fringe benefits and accompanying increases and decreases in social security (FICA), unemployment taxes, and workmen's compensation insurance. No general and administrative expense, overhead, or profit shall be allowed for any adjustment.

WAGES

Wages are hourly labor rates multiplied by hours worked. The wage increase or decrease is the **difference** between the former hourly labor rate actually paid and the new hourly labor rate in the new wage determination for affected employees or skills. Remember that we are only concerned with the difference, not adding the old wage and the new wage rate together to arrive at adjustment cost. For example, if the hourly wage rate in the base year was \$4.50 and the new wage rate is \$5.25, the adjustment is \$.75, not \$5.25 per hour. The **purpose** here is to permit payment to contractors who have experienced labor **increases directed by the Government**.

FRINGE BENEFITS

Fringe benefits include such items as health and welfare, expenses, vacations, holidays, sick leave, birthday leave, etc., which are usually shown in the Department of Labor Wage Determination or union agreement. For example, if the base year includes nine holidays and the option year includes nine holidays, the only adjustment is the difference in hourly wage rates. However, if the number of holidays in the base year is eight and the

option year has nine, one day consisting of eight hours for each full-time employee must be added to the option cost at the new hourly rate.

SOCIAL SECURITY (FICA)

Social security contributions by the contractor under a wage determination adjustment are limited to a certain **annual** base wage of total earnings for each employee. For example, in calendar year 1995, the FICA base is \$61,200 and the FICA tax rate is 6.2%. The contractor is not obligated to contribute social security beyond the \$61,200 per **calendar year**. If an employee's wages have exceeded the base salary when the option year starts, then the employer is not required to pay additional taxes. Consequently, **no adjustment** is due on that employee's salary **that has not reached the base salary and will still require** payment by the contractor.

UNEMPLOYMENT

State and Federal unemployment taxes are paid by the contractor using certain base cost and rate. The base and rate may **vary from state to state**. However, **the Federal rate remains constant for all contractors**, while the state rate will **fluctuate depending** on the contractor's **employment experience**. The lower the employee turnover, the lower the rate. For example, if the base salary is \$6,000, then an employee working 2,080 hours annually at a wage of \$3.00 per hour would earn \$6,240 (2,080 x 3.00). The unemployment taxes would only be applied to the first \$6,000. Remember, don't pay unemployment taxes above the base salary in any calendar year.

WORKMEN'S COMPENSATION

Workmen's compensation insurance **rates vary** from state to state and from contractor to contractor. Usually the total wage increase is covered by either a fixed insurance cost or an experience rate developed by insurance companies based on accident occurrence records by type of employment. **Contractors should** be required to **provide** their **current rates**, in option years, to ensure that the prevailing workmen's compensation rate is the applied wage increase only.

EXCLUSIONS

Liability insurance is not adjusted in option years. Although liability insurance is usually included in the basic contract, it is not a cost that is adjusted in option years. Therefore, no allowance is considered in the wage increase/decrease adjustment.

ALLOWANCES

Allowances for tools or uniforms are generally identified in the wage determination. These allowances are **not subject to adjustment**. Both items are contract requirements and are included in the wage determination to put the contractor on notice. The contractor, at his discretion, provides the uniform cleaning and/or tools or will pay the employee the stipulated allowance in the wage determination.

CONTRACT COST PRINCIPLES

The code of Federal Regulations, 48 CFR, Chapter 1, Part 31, contains general **cost principals** for pricing contracts and modifications when cost analysis is performed. It is also used for the determination, negotiation, or allowance of costs when required by a contract provision. 48 CFR Chapter 1 Part 31 **should not be confused** with the requirements of the Internal Revenue Service or the Cost Accounting Standard Board under P.L. 100-679.

The purpose of the **Internal Revenue Service** guidelines is to **determine taxable earnings** of individuals and companies to ascertain what taxes are due the Government. Therefore, the relationship to contract pricing is limited. **Commercial accounting recognizes customary costs** of doing business. 48 CFR Chapter 1 Part 31 accounting allows those costs that contribute **directly or indirectly** to contract performance without regard to the contractor's tax consequences.

By comparison, the **objective** of Cost Accounting Standards (CAS), 48 CFR Chapter 1 Part 30, is to ensure that **contractors maintain consistent accounting practices in estimating, accumulating, reporting, and allocating contract costs**. Although basically related to 48 CFR Chapter 1 Part 31, system consistency rather than the evaluation of each cost proposal is its objective.

Cost principles are concerned with the **allowability, allocability, and reasonableness** of proposed costs. The total costs of a contract are the sum of allowable direct and indirect costs allocable to the contract. **Direct cost** is any cost which is identified specifically with a particular contract. A direct cost could be material, labor, and any other charges specifically identified with the product or service. **Indirect costs** are any costs not directly identified with a single contract but identified with two or more contracts. Indirect costs are generally referred to as overhead and general and administrative expense.

A cost is **allowable** if it is **reasonable, allocable**, and not prohibited by 48 CFR Chapter 1 Part 31, and conforms to generally accepted accounting principles or practices. A cost is **reasonable** if by its nature and amount, it **does not exceed** that which would be **incurred by a prudent business person** in the conduct of a **competitive business**. An **allocable** cost is one which is **assignable or chargeable** to one or more contracts based on the relative benefits received or other equitable relationship. A cost is allocable to a Grantee contract if it: (1) is incurred specifically for the contract; (2) benefits both the contract and other work; (3) can be distributed to them in reasonable proportion to the benefits received; and (4) is necessary to the overall operation of the business, even though a direct relationship to any particular element of work cannot be shown. To illustrate, suppose a contractor uses the straight-line depreciation method on a depreciable piece of equipment. If the equipment is used on a contract and other commercial business, and the depreciation cost is allocated accordingly, then the cost meets the contract cost principles.

48 CFR Chapter 1 Part 31 **lists selected costs** applicable to Government contracts which are classified as **allowable or unallowable**. This list **does not** cover every element of cost and every situation that might arise in a particular case.

NEGOTIATION AND DOCUMENTATION

The **objective of negotiation** is to **reach an understanding** and agreement on **all terms and conditions** of the contract including the work to be done and the price to be paid.

Successful negotiation, the achievement of a **mutual agreement** that is in the best interests of both parties, is a **product of many factors**. These include:

- (1) The **fairness** of the aims and positions of each party.
- (2) The **thoroughness** with which each party prepares its position.
- (3) The **clarity and completeness** with which each party presents its own position and evaluates that of the other party.
- (4) The **skill, experience, motivation**, and open-mindedness of the two negotiators or negotiating groups.
- (5) The **willingness** of both parties to compromise when a genuine impasse occurs.
- (6) Perhaps most importantly, the **relative power or bargaining position** of each of the parties.

COMPETITIVE NEGOTIATION PROCESS

The process of reaching final contract negotiations after the receipt of proposals or offers **generally involves** these steps:

- (1) **Evaluate and rank offers** using the evaluation criteria specified in the RFP.
- (2) **Identify** those **offerors** whose proposals are determined to be within a competitive range.
- (3) **Identify and eliminate** unacceptable proposals (those containing such deficiencies in price and/or technical merit as to preclude further meaningful negotiations).
- (4) **Conduct** written or oral **discussions** with the offerors and, if necessary, **permit revision** of individual proposals in order to correct isolated deficiencies. If significant changes are allowed, all offerors must be given an opportunity to submit a new offer.
- (5) **Notify each eligible offeror** in writing of a final, common cutoff date for submission of written "**best and final**" offers.
- (6) **Select** the source or sources for award.

NON-COMPETITIVE NEGOTIATIONS PROCESS

Although the contracting officer is charged with the responsibility for making the final decision on the pricing arrangement and the terms and conditions of the contract, for negotiation purposes, the contracting officer may designate any member of the negotiation team as speaker for the group.

The **most important prerequisite** to effective negotiation is **through preparation**. No amount of experience, skill, or persuasion on the part of the negotiator can compensate for poor preparation. This is true for **one very obvious reason**: Every prospective **contractor** starts with the **inherent advantage** of knowing more about his own proposal than the Grantee does. He **knows the assumptions** underlying his cost estimates; the actual cost or price level at which he will be willing to accept the contract. **One of the Grantee representative's** primary tasks is to **try to uncover** as much of this as possible and thus minimize the contractor's initial advantage. **Seek out** any areas of **error** or potential **disagreement** in the contractor's offer. **No one likes surprises**; they can be costly. Decide in advance the terms that will produce the best overall arrangement for the Grantee. **NOTE**: The contractor has the advantage of knowing his proposal, but you have an advantage of knowledge gained by dealing with many proposals and knowing what other contractors do.

Preparation for negotiation involves several major steps:

- (1) **Understanding the requirement.** Perhaps the most important thing the negotiator must do in the **fact-finding** and **analytic process** that precedes negotiation is to gain a clear and comprehensive understanding of what is being bought. The **requirement is**, of course, the **foundation of all procurement action**, and it vitally affects most steps in the procurement process. To some degree, the nature of the requirement and available time control the price, contract type, terms, and bargaining position. The better the negotiator understands the supplies or services to be purchased, and their intended use, the better the job can be done throughout the entire contracting process, especially at the negotiating table.
- (2) **Analyzing the facts** and the **various intangibles** that might affect the negotiation, such as personalities, motives, strengths, and weaknesses.
- (3) Establishing the Grantees **negotiating objectives** on the basis of this analysis.
- (4) **Planning ways to achieve these objectives** at the negotiating table, in other words, plan negotiating strategy.

Some ideas on preparation for negotiation are furnished for your consideration. Some of these may be applicable to your case. You may wish to **add ideas from your own experiences**, from time to time, and maintain such a list to meet your own needs.

- (1) Determine and **select team members**, if you have this option.
- (2) **Determine the timing** involved in the **negotiation**.
- (3) **Determine the type** and **extent of the agreement** you are seeking.
- (4) Make a **list of every single point** to be negotiated.
- (5) Make a list of all points or topics which should be avoided in the negotiations.
- (6) Determine, and **clearly categorize**, which of the **negotiating points** are "**MUST**" points and which are "**GIVE**" points.
- (7) Determine and **reduce to writing** your **maximum and minimum positions** for each point to be negotiated, both "**MUST**" and "**GIVE**" points. Put dollar values whenever you can on your points or issues.
- (8) Determine and **obtain** your **authority** levels **to settle issues** or to settle the whole package under negotiation. Sometime you may need to touch base with your supervisor during negotiating recesses.

- (9) **Realistically evaluate your bargaining position** both for individual points and overall possibilities of success.
- (10) Work out when you propose to present the various points on your list to achieve the best results on the important points.
- (11) **Try to anticipate** opposing views and reactions on each point and prepare to rebut those views, if necessary.
- (12) Put yourself through a "**Devils Advocate**" exercise, whereby you test each of your points and positions to see if it is fair and reasonable to both sides.
- (13) **Research** your **opposition's background**, reputation, history, and performance record on previous agreements, contracts, etc.

PREPARATION DOCUMENTATION: THE PM

Some form of pre-negotiation document should be prepared for all negotiated procurements. The format, content and extent of detail will depend on your requirement and the magnitude and complexity of the negotiation. The purpose of the pre-negotiation memorandum (PM) is to assist in preparing for and conducting the negotiation. The following sample PM may be tailored to any negotiation and if followed you should feel fairly confident that you have considered almost all aspects of any negotiations.

SAMPLE DOCUMENT:

PRE-NEGOTIATION MEMORANDUM (PM) FORMAT

1. Grantee Contracting Activity _ 2. Date_
3. RFP/IFB or Contract Number _
4. Modification Number _
5. This acquisition is being accomplished by (check one)
- Full and Open Competition _
- Other than Full and Open Competition _

State reasons for other than full and open competition.

6. Contract Type _____
7. Offeror's (Name, Address) _____

8. Business Size and Type (Small, Large, DBE, WOB) _____
9. Offeror's Proposed Amount _____
10. Procurement Description (briefly describe the procurement)

<u>11. Pricing Structure</u>	<u>Prenegotiation Objective</u>
Cost	\$_
Fee/Profit (_ %)	\$_
Total Price	\$_

12. Delivery of Performance Period _
13. Points of Contact for this Document (name and phone number)
- a. Contracts_
- b. Technical_

PART A **INTRODUCTION**

1. In this paragraph, describe the acquisition, including a brief history of the requirement, the place of performance, and any other pertinent information. Questions to be answered include: What is it? Why is it needed? What is it for? Quantity? If this is a contract modification, what events or circumstances contributed to the needed change? State the Grantee's estimated amount of the proposed acquisition.
2. In this paragraph, address the extent of competition under the acquisition. Is the acquisition being accomplished under full and open competition? If other than full and open, include a statement regarding sole source approval. Additionally, was the requirement publicized in accordance with Grantee's procedures? (If not, cite the exception.) How many requests for solicitations were received? How many offers were received?
3. In this paragraph, include your planned negotiation schedule, and identification of the Grantee's negotiating team members by name and position.

PART B **SPECIAL FEATURES, REQUIREMENTS AND PRENEGOTIATION COMPLIANCE**

The following items should be addressed for all negotiated acquisitions:

1. The use of sealed bid procedures is not appropriate for this acquisition because

2. The prospective contractor(s) has/have been determined to be responsible technically and are financially stable. Yes_ No_
3. The prospective contractor(s) is/are not on the list of "Parties Excluded from Procurement and Nonprocurement Programs."

The following items should be included when applicable:

4. Pre-contract cost in the amount of \$_ for the period_ were approved by (name of individual).
5. Authority to enter into a letter contract was approved by (name of individual).
6. Justification for inclusion of option provisions is included in the contract file (FTA C 4220.1B, Chapter I, paragraph 9).
7. The offeror has submitted "Cost or Pricing Data." Yes_ No_
8. "Cost or Pricing Data" for major subcontract(s) has been submitted. Yes_ No_
9. Written waiver of the audit was granted by (name of individual).

10. The offeror(s) has/have an adequate accounting system as determined by (name of individual). (Cost reimbursement contracts, fixed price with price redetermination, incentive types and contracts containing progress payment provisions.)
11. EEO compliance has been requested or obtained.
Yes_ No_
12. In the event Grantee property is to be furnished to the offeror, has the Contracting Officer determined that the contractor has an acceptable property control system? Grantee furnished equipment estimated value \$ _____ consisting mainly of _____ . Grantee furnished material estimated value \$ _____ consisting mainly of _____ .
13. Address any deviations, special clauses or conditions anticipated.
14. The offer has _ has not _ submitted a subcontracting plan. Briefly discuss the subcontracting plan if applicable.

OPTIONAL PART C EVALUATION RESULTS

Note: **Include this Optional Part C only when the acquisition has been accomplished under full and open competition. When the acquisition is single source, incorporate the technical evaluation results within the cost and profit/fee analysis discussions.**

1. List the evaluation criteria.
2. Identify the offerors with their corresponding proposal amounts in tabular format. For example:

a. ABC Company	\$526,000.00
b. DEF, Inc.	\$501,497.00
c. GHI Corporation	\$422,398.00
3. Identify any proposals found to be so deficient that they were not capable of being evaluated. Include the date you notified the offeror.
4. Identify the offerors determined to be included within the competitive range. Also identify the offerors not included in the competitive range, including the basis for elimination.

Note: The evaluation of each offeror's proposal should be fully documented and included as an attachment to your PM. Each proposal must be evaluated against the evaluation criteria set forth in your solicitation, and should be in sufficient detail to permit a formal debriefing of an unsuccessful offeror.

Note: When the acquisition is being accomplished under full and open competition, and adequate price competition exists, price reasonableness may be established by application of price analysis alone. However, when cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer shall perform price analysis to ensure that the overall price offered is fair and reasonable.

PART C COST AND PROFIT/FEE ANALYSIS

In this Part C, compare, in summary, the offeror's proposal, the audit and/or other recommendations, and the Grantee's Prenegotiation objective. For example:

<u>Cost Element</u>	<u>Offeror's Proposal</u>	<u>Audit/Technical Recommendation *</u>	<u>Prenegotiation Objective</u>	<u>Numbered Notes **</u>
Direct Labor	\$	\$	\$	(1)
Labor Overhead	\$	\$	\$	(2)
Direct Material	\$	\$	\$	(3)
Mat'l Overhead	\$	\$	\$	(2)
Other Direct Costs	\$	\$	\$	(4)
Subtotal	\$	\$	\$	
G&A	\$	\$	\$	(2)
Subtotal	\$	\$	\$	
Profit/Fee	\$	\$	\$	(5)
Total	\$	\$	\$	(6)

The above is an example of the various cost elements that should be reviewed when analyzing a proposal. These elements are not to be interpreted as all encompassing because the cost elements of each offeror may be different.

***Audit/Technical Recommended:**

In general, an audit report will not include recommendations on direct labor hours or the validity of material and other direct costs. The technical evaluation/analysis generally will not include rate recommendations. Therefore, this column should be a combination of your two reports (audit and technical). In cases where you have not obtained an audit, you need only reflect the "Offeror's Proposal" and "Prenegotiation Objective" columns. The technical evaluation results can be addressed in your discussions, and would normally be used in the establishment of your objective.

For your information, "Technical Analysis" is defined as the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors which have been set forth in a proposal. In order to determine and report on the need for the reasonableness of the proposed resources assuming reasonable economy and efficiency, special knowledge is required. Therefore, a technical evaluation that doesn't address individual elements of cost (i.e., labor categories, labor hours, material, other direct costs, etc.), but merely states that the proposal is acceptable, is not considered adequate.

****Numbered Notes:**

(1) Direct Labor

Compare, in detailed discussion, the proposal, the audit and/or technical recommendations, and the prenegotiation objective direct labor categories, hours and rates.

For example:

<u>Labor Category</u>	<u>Offeror's Proposal</u>			<u>Audit/Technical Recommendation</u>			<u>Prenegotiation Objective</u>		
	<u>Hours</u>	<u>Rate</u>	<u>Amt.</u>	<u>Hours</u>	<u>Rate</u>	<u>Amt.</u>	<u>Hours</u>	<u>Rate</u>	<u>Amt.</u>
Engineer	xx	\$	\$	xx	\$	\$	xx	\$	\$
Programmer	xx	\$	\$	xx	\$	\$	xx	\$	\$
Clerical	xx	\$	\$	xx	\$	\$	xx	\$	\$
Total			\$			\$			\$

Offeror's Proposal

First subparagraph. Summarize the offeror's rationale for the proposed labor categories, hours and rates. Questions you can consider are: Are the proposed labor rates the result of a negotiated forward pricing rate agreement (FPRA)? Are they unaudited bidding rates which have been approved at a corporate level? Are they current actual rates for specific employees or a composite rate for personnel under each labor category? If the labor rates are developed on a specific base rate, what escalation factor (if any), has the offeror applied to the base rate? Is that a reasonable factor? Are the proposed labor categories and hours based upon the offeror's previous experience? What evidence of historically incurred hours has the offeror provided? Or, is the proposal an engineering estimate of the projected labor and expertise to accomplish the requirements of the acquisition? Do the proposed hours correspond to the performance period?

Audit/Technical Recommendation

Second subparagraph. Summarize the basis of the audit or other recommendations. How have the recommended labor rates been developed? For instance, audit reports generally use the Data Resources Indices in developing labor rate recommendations. This has been proven to be a reliable escalation predictor for labor rates and material items. If you have an audit report, the information for this subparagraph will be within the audit report. In the event you have not obtained an audit, it is advisable to contact your state audit office and request current rate recommendations. The recommendations of the technical evaluation should also be addressed under this subparagraph. It is important that the evaluation includes complete and factual support for any exceptions taken to proposed direct labor categories and hours.

Prenegotiation Objective

Third subparagraph. Discuss the Grantee's negotiation objective. What is it based upon? Did you rely on the audit recommendations? Did you rely on the technical evaluation in development of your objective labor categories and hours? An excellent resource for additional considerations during analysis of a proposal is the Armed Services Pricing Manual, ASPM. Additionally, the evaluation considerations in evaluating manufacturing labor in lieu of engineering labor differ greatly. In a manufacturing environment, other considerations may include application of learning curve theory, efficiency factors, recurring versus non-recurring labor, etc.

It is your responsibility to establish a reasonable objective after considering and analyzing all of the available data. Statements to the effect, "THE OFFEROR HAS PROPOSED THE SAME RATES ON OTHER CONTRACTS," are not adequate without discussion of how price reasonableness was determined under the other contracts.

(2) Labor Overhead, Material Overhead, and G&A.

Compare, in detailed discussion, the offeror's proposal, the audit and/or other recommendations, and the Grantee's objective for labor overhead, material overhead, and G&A. For example:

<u>Category</u>	<u>Offeror's Proposal</u>		<u>Technical/Audit Recommendation</u>		<u>Prenegotiation Objective</u>	
	<u>Rate</u>	<u>Amt.</u>	<u>Rate</u>	<u>Amt.</u>	<u>Rate</u>	<u>Amt.</u>
Labor Overhead	x%	\$	x%	\$	x%	\$
Material Overhead	x%	\$	x%	\$	x%	\$
G&A	x%	\$	x%	\$	x%	\$

Offeror's Proposal

First subparagraph. Describe how the offeror developed the proposed indirect rates. Does a forward pricing rate agreement exist? If so, what is the period covered by the agreement? This information should be provided by the offeror.

Audit/Other Recommendation

Second subparagraph. Explain what the audit's recommendations are based upon. This may include exception taken to some cost elements within the overhead pool, such as fringe benefits, unemployment taxes, rent, depreciation, etc. This information should be reflected in the audit report. If you do not obtain an audit report, you can request current rate recommendations and/or historical actual rates from your state audit office. Comparing the offeror's proposed rates to the actual rates can provide a good measure on how accurate the offeror's proposed rates have been.

Prenegotiation Objective

Third paragraph. Address how you developed the Grantee's prenegotiation objective, and upon what information you relied. Are your objective rates based upon recommendations? Occasionally, you may experience a situation where you haven't obtained an audit report, and your state audit office has no information on a specific offeror. In such cases, it may be to your advantage to request an audit of the offeror's rates. Absent this information, you will need to evaluate the offeror's proposed rates in detail (i.e., cost elements included in the indirect pools) for allowability and allocability. Comparing one offeror's rates with those of another offeror's is not an acceptable method in any case. Also, comparing this year's proposed rates to last year's rates is not a basis for establishing reasonableness of the currently proposed rate.

(3) Direct Material.

Provide a detailed breakdown and compare, in detailed discussions, the offeror's rates. It is not an acceptable method to compare rates with other offerors nor is it acceptable to compare the offeror's current proposed rates with last year's proposed rates to establish the reasonableness of the proposed rates.

<u>Material</u>	<u>Offeror's Proposal</u>			<u>Technical/Audit Recommendation</u>			<u>Prenegotiation Objective</u>		
	Qty	UP	Amt	Qty	UP	Amt	Qty	UP	Amt
Pwr Sup	xx	\$	\$	xx	\$	\$	xx	\$	\$
CM Chips	xx	\$	\$	xx	\$	\$	xx	\$	\$
Wire	xx	\$	\$	xx	\$	\$	xx	\$	\$
Other	xx	\$	\$	xx	\$	\$	xx	\$	\$
Total			\$			\$			\$

Offeror's Proposal

First subparagraph. Address the basis of the offeror's proposed direct material (engineering estimate? based upon history?, etc.) and costs associated with the material (catalog prices? oral quotes? written quotes? historical prices escalated by \$?, competitive?, etc.) Will there be any scrap, attrition or variance factors to consider? If applicable, has the offeror included an analysis for large dollar items? Is the analysis meaningful?

Audit/Technical Recommendation

Second subparagraph. Address the audit/technical recommendations. Has the auditor/originator taken exception to any of the proposed material items, quantities or associated prices? Have exceptions been adequately supported?

Prenegotiation Objective

Third subparagraph. Support the Grantee's prenegotiation objective. If you have taken exception to any material items and/or quantities, what information have you relied upon to reach your conclusions? If you have taken exception to any pricing aspects of the offeror's proposal, explain fully how you arrived at your objective. In cases where you have no audit report, the importance of a thorough technical evaluation is increased. You must make a determination of price reasonableness for the direct material items. When challenging a cost, explain the basis for your position. "Appears too high," without rationale, is not sufficient.

(4) Other Direct Costs (ODC).

Compare, in detail discussions, the offeror's proposal, the audit and/or technical recommendation, and the prenegotiation objective for other direct costs. For example:

<u>Cost Element</u>	<u>Offeror's Proposal</u>	<u>Technical/Audit Recommendation</u>	<u>Prenegotiation Objective</u>
Computer Support	\$	\$	\$
Freight	\$	\$	\$
Air Travel	\$	\$	\$
Per Diem	\$	\$	\$
Consultant	\$	\$	\$
Total ODC	\$	\$	\$

Offeror's Proposal

First subparagraph. Summarize the offeror's rationale for proposing the various expenses. The elements above are examples of the types of costs generally included as other direct costs (ODC).

Technical/Audit Recommendation

Second subparagraph. Summarize the audit and/or technical recommendations. Address all the items included under this element. Any exceptions taken must be fully explained.

Prenegotiation Objective

Third paragraph. Provide an analysis of the items included under this cost element. For instance, are the number of trips scheduled considered reasonable by audit or your technical evaluation? Are the costs per trip reasonable?

You can check air travel rates with commercial airlines. How does the offeror's proposed costs compare with previous history? Did the contractor apply an escalation factor? Is it reasonable? In your analysis, you may need to show a lower level breakdown (i.e., a breakdown of the number and location of proposed trips).

(5) Profit/Fee Analysis.

Provide a summary which compares the offeror's proposal and the Grantee's prenegotiation objective. For example:

<u>Offeror's Proposal</u>		<u>Prenegotiation Objective</u>	
Rate	Amt	Rate	Amt
xx%	\$	xx%	\$

Offeror's Proposal

First subparagraph. State the offeror's proposed profit/fee rate, that amount, and any other information provided by the offeror to support the proposed rate.

Prenegotiation Objective

Second subparagraph. Address the Grantee's prenegotiation objective profit/fee rate which should be based upon application of your structured approach.

Structured approaches for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered.

Grantees should use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Grantee's estimate of allowable costs to be incurred in contract performance together equal the Grantee's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Grantee does not recognize as allowable and contract type.

It is in the Grantee's interest to offer contractors opportunities for financial rewards sufficient to (1) stimulate efficient contract performance, and (2) attract the best capabilities of qualified large and small business concerns to Grantee contracts.

Both the Grantee and contractor should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of the profit, are not in the Grantee's interest.

PART D TYPE OF CONTRACT CONTEMPLATED

Explain the type of contract contemplated and the rationale for selection. If this prenegotiation memorandum is being written for a modification to an existing contract, you must also address the contract type.

PART E MAJOR DIFFERENCES

Identify any anticipated problem areas, exceptions taken by the offeror(s) to the solicitation terms and conditions, or major differences which may interfere with negotiations, and your intended negotiation strategy.

PART F NEGOTIATION APPROVAL SOUGHT

Give your specific recommendation similar to the following:

"Approval of this Pre-Negotiation Memorandum is recommended based upon the information set forth herein and authority to negotiate and enter into a contract is requested. It is considered the opinion of the negotiator that the Grantee's prenegotiation objectives are realistic and can be achieved."

Prepared by: _ Date: _
(Signature and Title)

Reviewed by: _ Date: _
(Signature and Title)

Approved by: _ Date: _

(Name and Title)

My Approval is: (check one) _ a. Unconditional
_ b. Conditional (See attached exceptions.)

SCENE

In facing the contractor's representatives, a very important facet for the negotiator to remember is that **only one person** is to address the contractor, and all other negotiation team members will participate **only upon request from the speaker**. The technical advisors, e.g., auditor, project officer, price analyst, etc., may pass notes to the negotiator and vice versa without interrupting the negotiations. This is an acceptable practice. The following are certain points to be followed in negotiations.

Selling the position. The **negotiator** must be sufficiently **convincing to sell the position**, it will not sell itself. In beginning negotiations, the following is desirable.

Determine who has the **authority** on the **contractor's** negotiating **team** to bind the firm to the agreed to price. Acknowledge the contractor's proposal and elaborate on the terms and conditions before discussing the price. A meeting of the minds is very important. **Attempt to settle any differences** in understanding of the specific requirements before proceeding to discuss the proposal cost elements. Recess if necessary to obtain any additional data. This process of defining requirements is referred to as "**fact finding**."

Be systematic in your approach. Determine in what order you will discuss the proposal; that is, resolve the high dollar items before the small dollar items or vice versa. By the same token, you may want to address the supportable items first and discuss the judgmental areas (estimates) last. In a nutshell, **being well prepared with verifiable facts** and/or **well-reasoned opinion** is a critical item of negotiation.

Don't underestimate the contractor. Most contractors have spent many hours developing their proposal and may be able to refute what appear to be firm or solid facts.

Always encourage a fact-finding session to instill confidence between the Grantee and the contractor that this is an arms-length transaction. Such discussions may well bridge the gap between the known and the projected data.

Never knowingly let the contractor make a critical mistake. For example, if engineering overhead or one of the other important cost elements is inadvertently omitted from the contractor's proposal causing an unrealistically low price, remaining silent, while accepting the defective price, will result in a bad contract with bad results. The Grantee should seek a price fair and reasonable for both parties (contractor and Grantee).

Avoid the deadlock. In conducting negotiations, avoid a deadlock. Sometimes the negotiators' tempers flare and create an atmosphere of animosity and ill-feeling on both sides. An alert negotiator will **conduct a meaningful negotiation** and exercise prudent judgment. The following are critical points.

Be polite but firm in negotiations. Emotional strains may provide the contractor with a sign of weakness or uncertainty on your part. This is no different than a good card player. Don't light up like a Christmas tree when you have a good hand! **Always listen** to the contractor's position and do not interrupt abruptly but, rather, ask if what you understand is correct or to please repeat the statement.

In addressing technical matters, that is, the quantitative and qualitative aspects of a proposal, **do not commit yourself without the advice of your technical advisor**. The same is true when discussing cost information. Do not let the contractor take advantage of the "Divide and Conquer Technique" which is prevalent when negotiation team members **disagree in front of the contractor**. Recess, if necessary, but never let this situation fully develop.

Negotiate using reasoning on the allocability and reasonableness of cost **rather than haggling or horse-trading**. Always keep in mind that convincing justification for including costs different from your objective

must be reflected in the Price Negotiation Memorandum. The **PNM is a permanent record** subject to further review.

If a deadlock on price is apparent, and an immediate solution is not available, suggest that both sides recess for the day and reconsider their positions. If necessary, present your best offer with the stipulation that you will consider any new data justifying the contractor's position. However, whenever possible, always **let the contractor be the first to submit a new offer**. Occasionally, the new offer may actually be below the Grantee objective. Remember offers should normally be on a total price basis, not element of cost.

Never give the appearance that you are closing the door on any negotiations. Seek alternatives to threats of terminating discussions. Again, it must be emphasized that the Grantee's objective is agreement on total price not specific cost elements or profit. **FTA C 4220.1D** supports the premise that the Grantee is primarily concerned with the **reasonableness of price** it ultimately pays and only secondarily with the eventual cost and **profit to the contractor**. Said another way, there will frequently be occasions where the contractor and the Grantee have the same "bottom line" price objective, even though they disagree on some underlying cost elements.

Mutual Concessions. Because the object of negotiations is to reach an agreement, concessions/compromises may be appropriate. **Concessions should not be treated as giveaways**. These are points to be earned by both parties and relinquishment will be made after thorough consideration. It's very important that the negotiator **take stock of the strong and weak issues** to be presented; the important and irrelevant, and the major and minor points to concede. When we speak of issues, it means to recognize how types, quantities, and costs of material, labor, overhead, and other factors were developed and to attempt to reconcile the proposal elements with the prospective contract requirements.

The negotiator should recognize that concessions do not necessarily mean the Grantee or contractor's integrity or intelligence is being challenged. To the contrary, **neither party's position is infallible**. If possible, give the contractor a way out (preferably your way). Here is where the total price approach will permit the contractor to concede on a crucial point without loss of dignity.

Conclusion. Realistically, not all negotiations are done in an atmosphere of complete satisfaction. The contracting officer should **strive to obtain maximum performance**, that is, quality, quantity and timely delivery, for the negotiated price. **Do not belittle, regret, or criticize the final settlement after all is said and done.**

Close the negotiation with a gesture of understanding and an indication of **mutual respect** for the positions taken by both parties. Express a desire to work with the contractor for a meaningful relationship. **Encourage a liberal line of communications** between the contractor's representatives, the Grantee contracting office, and the customer receiving the goods or services.

NEGOTIATION DOCUMENTATION: THE PNM

When the **negotiations** have been **concluded**, it is necessary to **reduce the outcome to writing**. This is done by developing the PNM. It depicts the elements that were discussed in negotiations and explains the basis for determination that the price is fair and reasonable.

Oftentimes negotiators find it difficult to prepare a PNM. They feel it is just an opinion of what transpired in negotiations and, in addition, the PNM format may seem unwieldy. However, it must be remembered that the **PNM is a very important document**. The PNM should **state the facts and judgmental areas** and should clearly demonstrate the fairness and reasonableness of the final agreement. The memorandum is important

because it is **written evidence** (the story) **of what transpired** in negotiations. Also it is a permanent record supporting the contract price decision. The memorandum should be explicit enough to:

- (1) **Reflect the most significant issues** affecting the (initial or revised) proposed and negotiated prices.
- (2) **Explain** the Grantee's **price objective** and the costs supporting that objective. In addition, state what Grantee activity/offices assisted in developing price.
- (3) **Indicate** what **cost or pricing data** submitted was or was not relied upon to reach a decision. Stipulate the degree of reliance placed on the factual data and why.
- (4) **Determine** if all **data submitted** was **accurate, complete, and current**; if not, what action did the contracting officer take?
- (5) **Determine** whether a **profit objective** was developed and the method used to develop the profit rate.
- (6) Explain how the negotiated price was **determined as fair and reasonable**.

Simply Stated:

Who assisted in the evaluations?

What was proposed and negotiated?

When was action taken?

Where do we stand on price, terms, conditions, and delivery that is expected?

How was price fairness and reasonableness justified?

A post negotiation memorandum (PNM) format is provided to assist you in documenting your negotiation efforts.

G&A	\$	\$	(2)
Subtotal	\$	\$	
Profit/Fee	\$	\$	(5)
Total	\$	\$	(6)

****Numbered Notes:**

(1) Direct Labor. Compare, in detailed discussion, the proposed, the audit and/or technical recommendations, and the prenegotiation objective direct labor categories, hours and rates. For example:

<u>Labor Category</u>	<u>Prenegotiation Objective</u>			<u>Amount Negotiated</u>		
	<u>Hours</u>	<u>Rate</u>	<u>Amt.</u>	<u>Hours</u>	<u>Rate</u>	<u>Amt.</u>
Engineer	xx	\$	\$	xx	\$	\$
Programmer	xx	\$	\$	xx	\$	\$
Clerical	xx	\$	\$	xx	\$	\$
Total	xx		\$	xx		\$

NOTE:

The extent of detail under the comparison should be directly related to the difference between the prenegotiated objective and the negotiated amount. The larger the difference, the more explanation is needed.

In this next paragraph, explain the basis for increases (or decreases) in direct labor categories, hours or rates that have been agreed to in negotiations. For instance, during negotiations you may have received information that would revise your position in any one of the labor areas. Perhaps the offeror may present arguments which more adequately support the proposed labor hours, such as previous actuals, etc. As a result of the information presented, contact your requiring activity, hold discussions, and determine that an increase (or decrease) in the number of direct labor hours is appropriate. In this case, you would address the information the offeror presented, your subsequent discussions with the requiring activity, and the reasons for an increase (or decrease) in the direct labor hours. The information should clearly present a logical series of events which result in the final negotiated settlement.

(2) Labor Overhead, Material Overhead, and G&A. Compare, in detailed discussion, the offeror's proposal, the audit and/or other recommendations, and the Grantee's objective for labor overhead, material overhead, and G&A. For example:

<u>Category</u>	<u>Prenegotiation Objective</u>		<u>Amount Negotiated</u>	
	<u>Rate</u>	<u>Amt</u>	<u>Rate</u>	<u>Amt.</u>
Labor Overhead	x%	\$	x%	\$
Material Overhead	x%	\$	x%	\$
G&A	x%	\$	x%	\$

In this paragraph, address any differences in the indirect rate(s) and the reasons for any changes. If the negotiated rate remains the same as your prenegotiation objective, but the amount changed due to a revised base, include a statement such as "The difference in amount is attributed to a difference in base." This explains why the negotiated and prenegotiation objective differ when the rates have remained unchanged. An example of a basis for changes in overhead rates would be an audit providing updated rate recommendations during negotiations.

(3) Direct Material. Compare, in detailed discussions, the prenegotiation objective and the negotiated direct material. For example:

<u>Description</u>	<u>Prenegotiation Objective</u>			<u>Amount Negotiated</u>		
	<u>Qty</u>	<u>U/P</u>	<u>Amt</u>	<u>Qty</u>	<u>U/P</u>	<u>Amt</u>
Power Sup	xx	\$	\$	xx	\$	\$
CM Chips	xx	\$	\$	xx	\$	\$
Wire	xx	\$	\$	xx	\$	\$
Other	xx	\$	\$	xx	\$	\$
Total			\$			\$

Again, address any differences in material, quantities or amount. For example, since the time of establishing your prenegotiation objective there have been changes in the metals market which have resulted in increased (or decreased) costs of one or more direct material items. This would be explained within this paragraph. The circumstances contributing to changes under this cost element could be any number of things. If the offeror's proposal was based upon a verbal quote and they have now obtained a firm written quote, or your previous experience indicates this contractor will obtain a discount when they place an order for the material, etc. Any information which caused an increase (or decrease) should be clearly explained.

(4) Other Direct Costs (ODC). Compare in detailed discussions, the prenegotiation objective and the negotiated other direct costs. For example:

<u>Cost Element</u>	<u>Prenegotiation Objective</u>	<u>Amount Negotiated</u>
Computer Support	\$	\$
Freight	\$	\$
Air Travel	\$	\$
Per Diem	\$	\$
Consultant	\$	\$
Total ODC	\$	\$

In this paragraph, address any differences in the items which comprise indirect costs. Explain fully, your reasons for increases (or decreases) in each item. As under direct materials, the reasons for changes under this cost element could be many.

(5) Profit/Fee Analysis. Compare, in detail, the prenegotiation objective and the negotiated profit/fee. For example:

<u>Prenegotiation Objective</u>		<u>Amount Negotiated</u>	
Rate	Amt	Rate	Amt
xx%	\$	xx%	\$

In this paragraph, address any differences in the profit/fee rate. If you achieve your objective rate, or the amount has changed due to a different base, make a statement to that effect. If you have negotiated a different rate, discuss the increasing (or decreasing) rate. An increased profit may be due if the offeror is assuming an increased risk. If the offeror draws your attention to facts you hadn't considered in your initial analysis which would increase the offeror risk. The facts introduced by the offeror would be presented thereunder as well as your rationale for changing the profit/fee rate. Include a summary to explain the agreed upon profit.

PART B OTHER

1. Describe any protests received since the prenegotiation memo was written, and their disposition. Also describe any potential protests based on your knowledge of the procurement and the participants.
2. Address any other issues or information which could have an impact on the proposed award.

PART C CONTRACTING OFFICER'S DETERMINATION OF PRICE REASONABLENESS (And, When Applicable, Source Selection Decision)

1. Set forth an affirmative statement that the negotiated price is fair and reasonable, and give the basis for the determination. If this PNM supports a source selection decision, this part should include a statement that the price is fair and reasonable, and that acceptance of the agreement, price and other factors considered, is in the best interest of the Grantee.

Prepared by: _ Date: _
(Signature and Title)

Reviewed by: _ Date: _
(Signature and Title)

Approved by: _ Date: _

(Name and Title)

My Approval is: (check one) _ a. Unconditional
_ b. Conditional (See attached exceptions.)

MODIFICATIONS

Modifications are issued for the purpose of **making contract changes**. They can be accomplished either **unilaterally** (by the Grantee) or **bilaterally** (by the Grantee and the Contractor). The most important thing to remember about modifications is that **each one must stand on its own merit**, just like a contract. Therefore, you must have a **reason** (requirement) **for the change, funds to support the change, evidence that prices are fair and reasonable**, and documentation which tells the story of the purchase.

TYPES

Although there are at least five recognized types of modifications, this guide deals with only the types that are most often used in Grantee contracting. These are Supplemental Agreements, Administrative Changes, and Change Orders. The **Supplemental Agreement** is the only one of the three which is accomplished **bilaterally**. This is also the **preferred type** because both parties, by signing the modification, agree to all the changes specified. **Administrative changes** are accomplished unilaterally and **do not affect the substance of the contract**. For instance, changing the paying office (administrative change) does not change the amount paid under the contract. **Change orders** are also **unilateral actions**, but these changes do affect the substance of the contract. In addition, by issuing a change order you automatically invoke the disputes procedures in the event an agreement on equitable adjustment for the change cannot be reached. By issuing a change order you are telling the contractor to "work now, we'll decide on terms and conditions later." **If at all possible** you should **agree on terms and conditions before the work is started** and issue a supplemental agreement which specifies the agreements made.

AUTHORIZED CHANGES

Supplemental Agreements. **Almost anything** within the scope of the contract may be changed as long as the change is in the **best interest of the Grantee**. Remember, this is where both parties show agreement with the changes and adjustments by signing the agreement.

Administrative Changes. Only changes which do not affect the substance of the contract may be made.

Change Orders. All changes must be **within the general scope of the contract**. The kind of contract will govern the specific changes that can be made. For supply contracts you can only make changes in drawings, designs, specifications, method of shipment or packing, and place of delivery. For service contracts you can only make changes in the definition of services to be performed, the time (hours of the day, days of the week, etc.), and the place of performance. For construction you may make any change in the work.

PROCEDURES

Supplemental Agreements:

1. **Determine** the required **change**.
2. **Obtain** Grantee **estimate and funding** document from the using agency.
3. **Inform the contractor in writing** of the proposed change and obtain a proposal from her/him.
4. Determine the pricing method which is most appropriate for analyzing the contractor's proposal. Depending on the dollar amount, you may use any or all of the methods discussed in this guide. See Section II for Price Analysis, and Section III for Cost Analysis.
5. Inform the using activity of what the contractor has proposed and the results of your analysis.
6. If necessary, **conduct negotiations** (Don't forget the PNM).

7. **Prepare the modification.** Be sure all changes are a part of the document. This includes any adjustments which are made, by either party, as consideration for making the change.
8. **Obtain the contractor's signature.**
9. **Obtain the contracting officer's signature.**
10. Double-check your modification file to be sure it is complete and documented well enough to tell the story of the purchase.
11. Obtain a **legal review** if appropriate.
12. Obtain **clearance from the Transit Board**, if appropriate.
13. Obtain signature from the manual approval authority, if appropriate.
14. **Issue the Supplemental Agreement.**

Administrative Changes:

1. **Determine** the required **change**.
2. Be sure that the change **does not affect the substance of the contract**.
3. **Prepare the modification.** Be sure the change is specific.
4. Obtain the **Contracting Officer's signature**.
5. **Issue the modification.**

Change Orders:

1. **Determine** the required **change**.
2. **Obtain** Grantee **estimate and funding** document from the using agency.
3. Be sure that a supplemental agreement cannot be used instead. Document why it cannot be used.
4. Be sure that the contract contains the "**changes**" **clause** or another clause which invokes it. If not, and if you cannot issue a supplemental agreement which incorporates the "changes" clause, you are in a "new" procurement situation. In other words, you need to establish a contract based on the new requirement.
5. **Prepare the modification** which specifies the change.
6. Be sure to insert a "**not to exceed**" dollar amount in the modification.
7. Double-check your document to ensure it is complete and explains why the change order must be issued. Also ensure that no higher or other review is required. If required, obtain them.
8. Obtain the **contracting officer's signature**.
9. **Issue the change order.**
10. **Obtain the contractor's proposal** (claim) for equitable adjustment for making the change.
11. **Determine the pricing method** which is most appropriate for analyzing the contractor's proposal. Depending on the dollar amount you may use any or all of the methods discussed in the guide. See Section II for Price Analysis and Section III for Cost Analysis.
12. Inform the requiring agency what the contractor has proposed and the results of your analysis.
13. If necessary, **conduct negotiations** (don't forget the PNM).
14. If agreement can be reached between the Grantee and the contractor, prepare a modification which specifies the changes, spells out the consideration for making those changes, and incorporates a "**release of claims**" from any additional adjustment resulting from the changes.
15. Obtain the **contractor's signature**.
16. Double-check your document to be sure it is complete and tells the full purchase story.
17. Obtain the **contracting officer's signature**.
18. Issue the supplemental agreement. Remember, this is the term used for a modification which is agreed to by both contracting parties.
19. If you went through the first 13 steps of the change order procedures and the Grantee and contractor **cannot reach an agreement**, you have a dispute concerning a question of fact. This will necessitate the contracting officer issuing a "**final decision**."

20. At this point, you should review the modification file to be absolutely sure that this **action is fully documented**, all required actions were taken in a timely manner, and there was a sound basis for the Contracting Officer's "final decision." Since the "disputes" clause provides the contractor with the right of appeal, it is possible that final settlement of this transaction may be at the direction of your final resolution board. Be sure you **obtain the appropriate legal** review before issuing a final decision.

SUMMARY

Use modifications to make changes in existing contracts. **Conclude negotiations prior to commencement of the work** required by the modification **whenever possible**. In fixed-price contracts, the profit is based on the contractor assuming all risk. In **after-the-fact negotiations**, the **Grantee assumes the risks** and ultimately all the costs. **Supplemental agreements** are **preferred** because they are bilateral actions. Administrative changes are used when the substance of the contract is unaffected. Change orders should never be used unless they are absolutely necessary. Even when change orders are issued, they must be followed up with a supplemental agreement. If this agreement can't be reached, the "disputes" clause comes into effect.

PRICING EXAMPLES

Price Analysis Examples:

1. Price Based on Adequate Price Competition;

a. Proper pricing --

- (1) Solicitation issued for custodial services estimated to cost \$8,500.00.
- (2) Services area is in two sections: A - 500 square feet and B - 1,500 square feet.
- (3) Proposals are allowed for area A, B, or both and administrative cost of \$300.00 is included as an evaluation factor for split awards.
- (4) Four responses are received as follows:

Joe's Inc.		Chapman Inc.		Jan Inc.		Jerry Inc.	
A	B	A	B	A	B	A	B
\$1,900	\$5,700	No Bid	No Bid	\$1,800	No Bid	\$2,000	\$5,400

- (5) All proposals are responsive and award is appropriately made to Jerry Inc., based on adequate price competition. In addition, considering the evaluation factor of \$300.00, total award to Jerry, Inc. results in lower overall cost to the Grantee.

This is substantiated as follows:

Jan Inc.	\$1,800 Area A	Jerry Inc.	\$2,000 Area A
Jerry Inc.	\$5,400 Area B	Jerry Inc.	\$5,400 Area B
Evaluation Factor:	<u>\$ 300 Split Award</u>	Evaluation Factor	<u>N/A</u>
	\$7,500 Total Cost		\$7,400 Total Cost

b. Improper Pricing --

- (1) Identical solicitation.
- (2) Four responses are received as follows:

Joe's Inc.		Chapman Inc.		Jan Inc.		Jerry Inc.	
A	B	A	B	A	B	A	B
No Bid	No Bid	No Bid	No Bid	No Bid	No Bid	\$5,500	\$2,000 \$5,400

- (3) While the award may go to Jerry, Inc., the price cannot be based on adequate price competition for area A, as Jerry, Inc. is the only price received. Some other form of pricing must be used.

2. Price Based on Previous Purchases;

a. Proper Pricing --

- (1) Solicitation issued for 1,000 optical split-screws estimated to cost \$10.00 each.
- (2) One response received from Joe's Inc., with a price of \$9.95 each.

- (3) Review of Order #M5505, which was for 2,000 optical screws reveals the following:
 - (a) The award price was \$9.85 each.
 - (b) The vendor was Joe's Inc., who offered a 10% quantity discount for purchases of 1,200 or more screws.
 - (c) The order was placed six months previously.
 - (d) Four responses were received, ranging in unit price from \$9.85 to \$10.00, and price was determined to be fair and reasonable based on competition.
- (4) No major fluctuations in the optical split-screw industry have occurred since the previous purchase.
- (5) Considering the circumstances of each requirement, award is rightly made to Joe's Inc., and price determined to be fair and reasonable based on previous purchases.

b. Improper Pricing --

- (1) Identical situation and response.
- (2) The only known previous purchase, which is six months old, reveals the following:
 - (a) Award was made to Joe's Inc., at a unit price of \$9.85 with competition being stated as the basis for price reasonableness.
 - (b) A close review of the order file indicates that while four responses were received from the previous solicitation, one was nonresponsive and two were "no bids."
- (3) Award cannot yet be made to Joe's Inc., as it is impossible to determine price reasonableness of previous purchases. While the previous price paid is close to the instant price, the previous price was not accurately determined to be fair and reasonable because competition did not, in fact, exist. Therefore, some other form of pricing must be used in the instant case.

3. Prices Based on Published Catalogs or Price Lists;

a. Proper Pricing --

- (1) Solicitation issued for 2,000 widgets estimated to cost \$10.00 each.
- (2) Two responses are received as follows:

Key Co., Inc.	Shafer Co., Inc.
No Bid	\$9.75
- (3) Shafer Co. Inc. states the price is published in the firm's current public sales catalog and attaches a copy of the page on which widgets appear at \$9.75 each.
- (4) Award is rightly made to Shafer Co. Inc., and price determined to be fair and reasonable based on catalog prices.

b. Improper Pricing --

- (1) Identical situation and response.
- (2) Shafer Co. Inc. states their price of \$9.75 is quoted from the current Widget Division Pricing Bulletin which is not releasable to the public.
- (3) Award should not be made, as price cannot be determined fair and reasonable. Based on the information available, the price list in question is probably an internal document which does not accurately reflect the price at which widgets are normally sold to the general public.

4. Established Market Prices;

a. Proper Pricing --

- (1) Solicitation issued for 20,000 standard or equal 2" ringers estimated to cost \$.60 each.
- (2) Only one quote received: Joe's Hardware, at \$.58 each.
- (3) When questioned, Joe states that while his quote is for standard ringers. There are numerous manufacturers and suppliers of ringers equal to the ones he quoted. In fact, he even provides copies of invoices for the four most recent large sales of various manufactured ringers to various commercial firms.
- (4) Award is rightly made to Joe's Hardware and the price determined to be fair and reasonable based on established market prices.

b. Improper Pricing --

- (1) Identical situation, except that the specification is for 2" ringers estimated to cost \$.60 each.
- (2) The only known use for this item is on a unique piece of equipment owned by the using activity and the estimated cost is \$.75 each.
- (3) One quote is received: Joe's Hardware at \$.68 each.
- (4) Joe is unable to produce any record of commercial sales and can only locate one source for them.
- (5) Award should not be made without further analysis, as price cannot be determined to be fair and reasonable based on established market price. This does not appear to be a commercial item sold in substantial quantities to the general public.

5. Prices Set by Law or Regulation;

a. Proper Pricing --

- (1) Solicitation issued for temporary refuse collection at a remote transfer site for a period of three months. Estimated tonnage is 1,000 tons at an estimated cost of \$6,000.00.
- (2) One quote received from P.U. Garbage for a price of \$5.00 per ton.
- (3) The local utility regulatory commission has set refuse collection rates based on mileage from city hall for a radius which includes the transfer site. (The regulated rate for the site is \$5.00 per ton.)
- (4) Award is made to P.U. Garbage and the price determined to be fair and reasonable, based on the local utility regulatory commission's rate schedule for refuse collection.

b. Improper Pricing --

- (1) Identical situation and response.
- (2) The local utility regulatory commission has set refuse collection rates for a radius 30 miles from city hall with the highest rate being \$3.00 per ton at the 30 mile point.
- (3) The transfer site is 50 miles from city hall.
- (4) Award should not be made without further analysis, because refuse collection prices for the area in question (the transfer site) are not controlled by law or regulation.

6. Prices Based on Comparison with Grantee Estimate;

a. Proper Pricing --

- (1) Solicitation issued for one roll (10,000 Linear Feet) of #2 copper wiring, estimated to cost \$.60 per foot.

(2) Two responses are received as follows:

Hackett Electric, Inc.
\$570

Kemp Light Corp.
No Bid

(3) The Grantee estimate must be used for price analysis in this case as all other forms of price analysis have failed.

(4) The buyer contacts the estimator and learns the following:

- (a) The wiring is to be used for an in-house construction job and the electrical engineer provided the figure of \$.60 per linear foot.
- (b) The electrical engineer stated this figure came from the current issue of Electrical Estimating Magazine, a trade journal, and the same price is currently included in a Corps of Engineers contract for which the Grantee engineering division has received a copy.
- (c) The Corps of Engineers contract number and a copy of the trade journal are provided to the buyer.

(5) Award is rightly made to Hackett Electric, Inc., and the price determined fair and reasonable through comparison with the validated Grantee estimate.

b. Improper Pricing --

(1) Identical situation and response, with all other forms of price analysis failing to provide a valid pricing basis.

(2) Upon contacting the estimator, the buyer learns the following:

- (a) The electrical engineer had used this figure in a recent in-house construction estimate and, when questioned, was fairly certain this was the price that had been paid in a recent contract, but he could not remember the contract number, when it was accomplished, or exactly what it was for.
- (b) Since the electrical engineer had provided the price, the estimator had simply passed it on to contracting, as the engineer is considered an expert in electrical wiring.

(3) Award should not be made without further analysis, as the estimate (pricing basis) cannot be validated and therefore cannot be used to determine price reasonableness.

Cost Analysis Examples:

1. Limited Cost Analysis;

a. Proper Pricing --

- (1) Solicitation issued for construction of two concrete ramps estimated to cost a total of \$32,106.00.
- (2) Two responses are received as follows:

Bob Co. Inc.	Concrete Builders Corp.
No Bid	Lump Sum \$35,000.00

- (3) Detailed cost estimates are obtained from the Grantee and the contractor (see figures 1 and 2).
- (4) Negotiation results in a compromise figure of \$34,000.00 based on revised material costs.
- (5) File is documented to fully explain how the negotiated price was established.

b. Improper Pricing --

- (1) Identical solicitation and response.
- (2) Contractor provides a cost breakdown delineating total cost for labor, material, profit, and overhead, and offers a voluntary price reduction resulting in a proposal of \$34,000.00.
- (3) The Grantee estimator concurs in this price and forwards a Purchase Request to increase funds to the amount of \$34,000.00.
- (4) Award is made and the file is documented to show that price reasonableness is based on the Grantee's acceptance of the voluntary price reduction.
- (5) This is improper because nothing has been done to insure the price is actually fair and reasonable.

FIGURE 1:
COST ESTIMATE PREPARED BY REQUIRING ACTIVITY
PROJECT No. NNSVEG XX-31
CONSTRUCT CONCRETE RAMPS, Sol. No. NUNSVEG XX-P-3101

LABOR:

Carpenter:	- 40 hrs	@ \$17.50	= \$ 700.00
Concrete Mason	- 100 hrs	@ \$20.00	= \$ 2,000.00
Apprentices	- 140 hrs	@ \$10.00	= \$ 1,400.00
Laborer	- 560 hrs	@ \$ 7.00	= \$ 3,920.00
Project Manager	- 140 hrs	@ \$25.00	= <u>\$ 3,500.00</u>

TOTAL: \$11,520.00

MATERIAL:

Concrete	- 140 cu.yd.	@ \$55.00	= \$ 7,770.00
Reinforcing Rods	- 560	@ \$10.00	= \$ 5,600.00
Wood	- 80 pieces	@ \$ 7.00	= <u>\$ 560.00</u>

TOTAL: \$13,860.00

Overhead (Including G&A) @ 15%	= \$ 3,807.00
Profit @ 10%	= <u>\$ 2,918.70</u>

TOTAL ESTIMATE: = \$32,105.70
SAY: = \$32,106.00

FIGURE 2
COST ESTIMATE PREPARED BY CONCRETE BUILDERS INC.
Sol. No. NUNSVEG XX-P-3101, CONSTRUCT CONCRETE TARGETS

LABOR:

Concrete Mason	- 100 hrs	@ \$25.00	= \$ 2,500.00
Mason's Apprentice	- 50 hrs	@ \$12.50	= \$ 625.00
Carpenter:	- 50 hrs	@ \$20.00	= \$ 1,000.00
Carpenter's Apprentice	- 25 hrs	@ \$10.00	= \$ 250.00
Laborer	- 840 hrs	@ \$ 5.00	= \$ 4,200.00
Project Manager	- 150 hrs	@ \$30.00	= \$ <u>4,500.00</u>
TOTAL:			\$13,075.00

MATERIAL:

Concrete Mix	- 200 bags	@ \$ 5.00	= \$ 1,000.00
Sand	- 10 loads	@ \$ 25.00	= \$ 250.00
Small Stone	- 30 loads	@ \$ 50.00	= \$ 1,500.00
Reinforcing Rods	- 560	@ \$ 10.00	= \$ 5,600.00
Mixer Rental	- 8 days	@ \$150.00	= \$ <u>1,200.00</u>
TOTAL:			\$ 9,550.00

G&A @ 25%	= \$ 5,656.25
Other Overhead @ 10%	= \$ 2,262.50
Profit @ 15%	= \$ <u>4,581.56</u>

TOTAL ESTIMATE: = \$35,125.31
SAY: = \$35,000.00

2. Cost Analysis with Certified Cost or Pricing Data;

a. Proper Pricing --

- (1) Sole source requirement received for 100 Bus transmissions estimated to cost \$5,500.00 each, or \$550,000.00 total.
- (2) RFP issued to BUSCO and proposal of \$580,000.00 received along with all data required to justify the proposal.
- (3) An audit is requested and the Grantee price analyst is asked to review BUSCO's proposal.
- (4) The audit report verifies the correctness of BUSCO's accounting systems and estimating methods but recommends close scrutiny of the production costs included in the proposal.
- (5) The price analyst finds a possible error in the application of variable manufacturing overhead costs and recommends a proposal reduction of \$400.00 per unit.
- (6) During negotiations BUSCO revised the proposal to \$542,000.00 based on an administrative error in the application of overhead cost. Material overhead was too low and manufacturing too high.

- (7) The final negotiated price was \$5,420.00 per unit and BUSCO submitted revised cost and pricing data to support this price. This data was certified as of the date the agreement was reached.
- (8) Award was made to BUSCO and the file was documented by a PNM.

b. Improper Pricing --

- (1) Identical solicitation and response.
- (2) Identical audit report but price analyst is not used.
- (3) During negotiations the Contracting Officer questioned BUSCO's production costs and the BUSCO negotiator explained that material overhead had been figured close to the minimum but the company could offer a \$100.00 per unit decrease in order to reach a fast agreement. Considering this the only area of contention, the Contracting Officer accepted this offer.
- (4) Award was made in the amount of \$5,700.00 per unit and the file documented by a PNM. The cost and pricing data was only submitted verbally and was certified at the commencement of negotiations.
- (5) This award is questionable because the Contracting Officer did not analyze the proposal sufficiently to ensure all areas of contention were recognized before negotiations; obtained certification of cost or pricing data prior to reaching agreement on price; and did not obtain cost and pricing data in writing.

EVALUATION AND NEGOTIATION OF FIXED PRICE ARCHITECT-ENGINEER (A/E) CONTRACTS

Guidelines:

The evaluation of Architect-Engineer contracts is governed by the same requirements as a non-competitive contract. It is essential to have a good in-house estimate and a complete and accurate cost proposal from the A&E contractor.

The requirement for an audit examination of the contractor's proposal is highly encouraged to ascertain the salaries and wages for each labor discipline and establish whether the proposed General and Administrative (G&A) expense and overhead costs or rates are reasonable and allocable within the purview of 48 CFR, Chapter I, Part 31. However, where the contracting officer has determined that sufficient and adequate information is available to establish a reasonableness determination, the audit examination may not be necessary.

Under the presumption that an acceptable proposal has been received by the contracting officer, an audit examination was conducted or waived based on available information, and a technical evaluation has been received, the contracting officer should proceed as follows:

Assure that all labor categories and/or disciplines as proposed by the contractor are compared with the Grantee estimate.

If any discrepancies are detected in the type and quantity of personnel and labor hours, coordinate with the Grantee technical estimator to establish the reason for any differences. The cost reasonableness of overhead and G&A, as well as the rate of profit, is the contracting officer's responsibility.

Attempt to resolve any differences on design engineering, drafting, and ancillary requirements such as type and quantity of blueprints, reproduction, transportation, per diem, and site explorations, etc., before any negotiation on price is initiated.

Once the technical requirements are resolved or reconciled with the proposed efforts, proceed as follows:

- (1) Verify the validity of the proposed salaries and/or hourly labor rates for each labor category.
- (2) Ascertain that the labor categories, cost, and quantity are properly computed.
- (3) Verify that any principal(s) (Architect-Partner/Owner) salaries are not included both as direct labor and indirect labor (Overhead and G&A) costs.
- (4) Check for any transposition of labor hours and costs between the two most common areas, drafting and technician. Drafting normally should be higher in hours but lower costs.
- (5) Verify the proposed overhead and/or G&A cost elements (if itemized) for compliance with 48 CFR Chapter I, part 31. If the elements are not itemized, request that the contractor substantiate the proposed rate(s). In either case, the contracting officer should determine that the Grantee absorbs only its fair share in relation to the contractor's commercial business. The contracting officer should request the auditor to conduct an examination of the contractor's records. If this is not feasible, contact other public/Government activities with whom the contractor has had A-E contracts or similar undertakings. In the absence of auditable data, the contractor must justify any proposed costs or rates, or be persuaded to accept the contracting officer's best judgment.

^[1] ASPM 1 can be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402, or the Commerce Clearing House, Inc., 4025 W. Patterson Ave., Chicago, Illinois 60646.

Procurement Decision Matrix

Micro-purchase

Amount < \$3,000
Multiple Sources

Competitive Procurement

Amount > \$3,000
Multiple Sources
Not an Emergency

Sole Source

Approved by FTA
OEM, Custom Item **OR**
Only One Source **OR**
Competition Inadequate after Solicitation **OR**
Emergency/Public Exigency

Small Purchase

Amount < \$100,000
Complete and Adequate Specification or Description
Two or more quotes available

Sealed Bid (IFBs)

Complete and Adequate Specification or Description
Two or more responsible bidders willing to compete
Selection can be made on the basis of price alone
Firm Fixed Price Contract
No discussion with bidders required after receipt of bids

Type of Contract

Fixed price
Firm fixed unit prices
Cost plus fixed fee
Time and materials
Blanket purchase order
Indefinite Delivery
Indefinite Quantity (IDIQ)

Competitive Proposals (RFPs)

Complete Specifications Not Feasible
Bidder Input Needed
Two or more responsible bidders willing to compete
Discussion needed with bidders after proposals
Fixed price can be set after discussions **OR**

Procurement Summary

PROCUREMENT MEMORANDUM

Date: _____ Completed by: _____
PO / Contract No. _____
Source of Funding: _____

Method of Procurement

Micro Purchase: _____ Competitive RFP: _____ Competitive Bid: _____
Small Purchase: _____ A&E Services: _____ Sole Source: _____

Justification if Non-Competitive:

Reason for the Procurement

Contract Type: _____
Rationale for contract type: _____

Reason for Contractor selection or rejection: _____ Lowest responsive, responsible bidder: _____
Evaluation results were: _____

Basis for Contract Price:

Accepted contractor's proposed pricing: _____
Negotiated Price (attached memorandum) _____
Other: _____

Cost / Price Analysis:

The price offered by the supplier was within ____% of the independent estimate, and variance between the offerors constituted a range of _____. The competitive range was determined to be from \$_____ Pricing discrepancies between the offers was attributed to _____ Other sources/data used to affirm price reasonableness were _____

Summary of Responsibility and Responsiveness Checks

Award _____ Date of contract award: _____
Board Approval (Attach Meeting Minutes): _____

Change Orders

Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.

Responsibility Determination Form

Bid/RFP No: _____

Supplier: _____

Date: _____

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable		Comment
1. Appropriate financial, equipment, facility, and personnel	Yes	No	_____ _____ _____
2. Ability to meet the delivery schedule	Yes	No	_____ _____ _____
3. Satisfactory period of performance	Yes	No	_____ _____ _____
4. Satisfactory record of integrity, not on debarred or suspended listings	Yes	No	_____ _____ _____
5. Receipt of all necessary data from supplier	Yes	No	_____ _____ _____

SOW Template

Statement of Work Title: [Type text]
1.0 Project Background
<ul style="list-style-type: none"> ▪ Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought. ▪ Short statement of the problem to be resolved ▪ Expected project duration ▪ Transit Agency organizational units and/or key individuals involved in managing the project ▪ Alternative solutions or implementation strategies evaluated
<p>a) Transit Agency requires these products and/or services due to:</p> <p>b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:</p> <p>c) The completion of this work will help Transit Agency:</p>
Statement of Work Title: [Type text]
1.0 Project Background
<p>Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought.</p> <p>Short statement of the problem to be resolved</p> <p>Expected project duration</p> <p>Transit Agency organizational units and/or key individuals involved in managing the project</p> <p>Alternative solutions or implementation strategies evaluated</p> <p>a) Transit Agency requires these products and/or services due to:</p> <p>b) Transit Agency is attempting to complete a project on _____ and requires supplier/contractor assistance in the:</p> <p>c) The completion of this work will help Transit Agency:</p>
2.1 Results
<p>Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.</p>

Sole Source Justification Form

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

Check one:

_____ The item is available only from a single source (sole source justification is attached).

_____ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

_____ FTA authorizes noncompetitive negotiations (letter of authorization is attached).

_____ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

_____ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

_____ Independent Estimate and Cost Analysis are attached.

Purchasing Agent

Senior Manager

Date

Date

CARTA PROCUREMENT FILE CHECKLIST

		<u>Date</u>	<u>Initials</u>
_____	Requisition	_____	_____
_____	ICE	_____	_____
_____	Federal Clauses	_____	_____
_____	Advertised	_____	_____
_____	Bid abstract	_____	_____
_____	Cost/Price Analysis	_____	_____
	Bonds:		
_____	Bid	_____	_____
_____	Performance	_____	_____
_____	Payment	_____	_____
_____	Responsibility Determination	_____	_____
_____	Fair & Reasonable Determination	_____	_____

CARTA PROCUREMENT FILE CHECKLIST

		<u>Date</u>	<u>Initials</u>
_____	SAM Excluded Parties	_____	_____
_____	Buy America	_____	_____
_____	Pre-Award	_____	_____
_____	Post Delivery	_____	_____
_____	Federal Clauses	_____	_____
_____	Options (Pricing evaluated at time of award)	_____	_____

PROCUREMENT HISTORY FILE CHECKLIST

CONTRACT NUMBER	CONTRACTOR NAME	CONTRACT AWARD DATE
------------------------	------------------------	----------------------------

COMMODITY CODE/ BRIEF ITEM DESCRIPTION	AMOUNT \$	CONTRACT START DATE
---	------------------	----------------------------

NO.	ITEM	IN FILE	N/A	NO.	ITEM	IN FILE	N/A
1.	PROCUREMENT REQUEST			16.	NEGOTIATION MEMORANDUM <i>(If Applicable)</i>		
	Funding/Accounting Code			17.	SOURCE SELECTION REPORT AND RELATED DOCUMENTS		
2.	INDEPENDENT COST ESTIMATE			18.	CONTRACTOR RESPONSIBILITY DETERMINATION		
3.	STATEMENT OF WORK (SPECIFICATION)			19.	REQUIRED AWARD APPROVALS		
4.	PROCUREMENT PLAN AND TIMELINE			20.	NOTICE OF INTENT TO AWARD		
5.	SINGLE-SOURCE JUSTIFICATION <i>(If Applicable)</i>			21.	PROTESTS		
6.	MARKET RESEARCH DOCUMENTS			22.	SIGNED (CONFORMED) CONTRACT		
7.	BIDDERS LIST			23.	CONTRACT MODIFICATIONS		
8.	SOURCE SELECTION PLAN AND DOCUMENTS			24.	OPTION EXERCISES AND RELATED DOCUMENTS		
9.	SOLICITATION AND AMENDMENTS			25.	CONTRACT DATA AND REPORTS		
10.	PRE-SOLICITATION APPROVALS			26.	COMPLAINT AND PERFORMANCE REPORTS		
11.	ADVERTISING			27.	DOCUMENTATION CONCERNING PRE- OR POST AWARD MISTAKES IN BID		
12.	PRE-BID OR PROPOSAL CONFERENCE NOTES AND QUESTIONS & ANSWERS <i>(If Applicable)</i>			28.	INVOICES/ VOUCHERS		
13.	BIDS/PROPOSALS AND SOLICITATION AMENDMENT ACKNOWLEDGEMENTS			29.	OTHER CORRESPONDENCE		
14.	"NO BID" LETTERS OR OFFEROR DISQUALIFICATION CORRESPONDENCE			30.	GENERAL CONTRACT CORRESPONDENCE		
15.	COST OR PRICE ANALYSIS			31.	CONTRACT CLOSE-OUT		

REMARKS

BUYER'S SIGNATURE	DATE
--------------------------	-------------