



# ***Augusta Public Transit(APT)***

***2015***

## ***Procurement Manual***



Published: 2013  
Revised: March 17, 2015  
Revised:



## Table of Contents

<b>Purchasing Policy Statement</b>		<b>5</b>
<b>Section 1</b>	<b>Purpose and Application</b>	<b>6</b>
	1-101 Purpose	
	1-102 Application	
	1-103 Sub-Recipients	
<b>Section 2</b>	<b>Definitions</b>	<b>6</b>
	2-201 Definitions	
<b>Section 3</b>	<b>Organizational Chart and Roles Responsibilities and Delegation of Delegation of Authority</b>	<b>10</b>
	3-301 Organizational Chart	
	3-302 Roles, Responsibilities and Delegation of Authority	
	3-303 Ethics/Standard of Conduct	
	3-304 Personal Conflicts of Interest	
	3-305 Proper Personal Conduct	
	3-306 Organization Conflicts of Interest	
	3-307 Issuances of Standards of Conduct	
	3-308 Sanctions for Violation of Ethic / Standards of Conduct	
	3-309 Disadvantaged Business Enterprises	
<b>Section 4</b>	<b>General Procurement Practices</b>	<b>14</b>
	4-101 General Procurement Practices	
	A. Awards and Responsible Contractors	
	B. Review of Procurement Requests to Avoid Duplicate or Unnecessary Purchases	
	C. Competition: Non-Collusive Bids and Proposals	
	D. Splitting Purchases	
	E. Purchase Orders	
	4-102 Methods of Procurement	
	A. Micro-Purchases	
	B. Small Purchases	
	C. Large Purchases	
<b>Section 5</b>	<b>Protests and Disputes</b>	<b>28</b>
	5-101 Protest Procedures	
	A. Pre-Award Protest	
	B. Post-Award Protest	
	C. Appeals to FTA	
<b>Section 6</b>	<b>Contract Administration</b>	<b>29</b>
	6-601 Contract Administration	
<b>Section 7</b>	<b>Contract Clauses</b>	<b>29</b>
	7-701 Contract Clauses	



<b>Section 8</b>	<b>Procuring Equipment or Materials Using Option Clauses</b>	<b>30</b>
	8-801 Procuring Equipment or Materials Using Option Clauses	
	A. Definition of Option Contract	
	B. FTA Requirement for Option Contracts	
	C. Purchasing Options on Other Grantee's Bus Procurement (Piggybacking GSA)	
<b>Section 9</b>	<b>Contract Guidance</b>	<b>30</b>
	9-901 Contract Guidance	
	A. Maximum Length of Service and/or Supply Contracts	
	B. Purchasing Extended Warranties With Capital Grant Funds	
	C. Payment Provisions In Contracts	
	1. Using Advance Payments	
	2. Using Progress Payments	
	3. Prompt Payment	
	4. Final Payment	
	9-902 Other Contract Types	
	A. Revenue Contract Types	
	B. Use of Time And Materials Type Contracts	
<b>Section 10</b>	<b>Performing Independent Cost Estimates, Cost and/or Price Analyses</b>	<b>33</b>
	10-1001 Cost Estimate	
	A. Independent Cost Estimate	
	10-1002 Cost Analysis	
	1. When to Perform a Cost Analysis	
	2. Cost Analysis Process	
	10-1003 Price Analysis	
	A. Price Analysis	
	B. Profit	
	C. Federal Cost Principles	
<b>Section 11</b>	<b>Purchasing/Leasing Buses with FTA Funds (Bus Testing)</b>	<b>35</b>
<b>Section 12</b>	<b>Buy America</b>	<b>36</b>
	12-12-1201 Buy America Pre-America Pre-Award and Post Delivery Requirements	
<b>Section 13</b>	<b>Public Access to Procurement Information</b>	<b>36</b>
<b>Section 14</b>	<b>Responsibility of Bidders and Proposers</b>	<b>36</b>
	14-1401 Determination of Responsibility	
	14-1402 Determination of Non-Responsibility	
	14-1403 Right of Nondisclosure	
<b>Section 15</b>	<b>Gratuities and Kickbacks</b>	<b>37</b>
<b>Section 16</b>	<b>Buy America Rolling Stock</b>	<b>38</b>
<b>Section 17</b>	<b>Other Work and Change Orders</b>	<b>38</b>
<b>Section 18</b>	<b>FTA Bonding Requirements (See APPENDIX 5)</b>	<b>50</b>

References

Attachments/Appendices

A	PIGGYBACKING WORKSHEET
B	DOCUMENT CHECKLIST FOR FTA-FUNDED PIGGYBACK PROCUREMENT
C	CHECKLIST FOR GDOT/GSA
D	FTA TYPE OF PROCUREMENT CLAUSES
E	INDEPENDENT COST ESTIMATE FORM
F	PRICE ANALYSIS
G	SOLE SOURCE JUSTIFICATION AND APPROVAL FORM
H	COST ANALYSIS FORM and GUIDELINES
I	SOLICITATION FILE CHECKLIST
J	ROLLING STOCK
K	PRE-AWARD AND POST-DELIVERY REVIEW CHECKLIST – Rolling Stock
L	CERTIFICATE OF COMPLIANCE WITH BUS TESINTING REQUIREMENT
M	FEDERAL MOTOR VEHICLE SAFETY STANDARDS
N	FEDERAL CERTIFICATE BUY AMERICA CERTIFICATION
O	DEBARMENT AND SUSPENSION CERTIFICATION
P	DEBARMENT AND SUPSPENSION CERTIFICATION (Lower-Tier)
Q	NON-COLLUSION AFFIDAVIT
R	CERTIFICATION REGARDING LOBBYING
S	DBE APPROVAL CERTIFICATION
T	PROMPT PAYMENT AFFIDAVIT
U	CONTRACT/PURCHASE ORDER FILE INDES (SEALED BIDS)
V	CONTRACT/PURCHASE ORDER FILE INDEX (RFP)
W	RESPONSIBILITY DETERMINATION FORM
X	METHOD OF PROCUREMENT - DECISION MATRIX FORM
Y	BID CHECKLIT FORM
Z	BID COST FACTORS FORM
AA	NONCOMPETITIVE PROCUREMENT JUSTIFICATION FORM
BB	DISCLOSURE STATEMENT
CC	SOLE SORCE COST ANALYSIS FORM
DD	BID SUMMARY FORM
EE	AWARD RECOMMENDATION AND JUSTICATION FORM
FF	PRICE/RATE QUOTATION FORM
GG	LEASE/PURCHASE ANALYSIS
HH	COMPLIANCE MATRIX BY DEPARTMENT
APPENDIX	
1	CONTRACT ADMINISTRATION PROCEDURES
2	EMPLOYMENT ELIGIBILITY VERIFICATION AND SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENT (SAVE)
3	FTA TRAINING
4	GENERAL CONDITIONS
5	FTA – BONDING REQUIREMENTS
6	REQUIRED PROCUREMENT ELEMENTS AND SUGGESTED BEST PRACTICES



# Purchasing Policy Statement

---

**This policy applies to the procurement of all goods and services.**

It is the policy of the Augusta Board of Commissioners to:

- Ensure compliance with the Augusta Georgia Procurement Code, Article 10 as well as other state and federal laws applying to purchasing;
- Provide equal access to all vendors participating through competitive acquisition of good and services;
- Conduct the procurement process and investment recovery in a manner that promotes and Fosters public confidence in the integrity of the Authority's procurement procedures; and
- Protect the interests of taxpayers without regard to any undue influence or political pressures.

Augusta, Georgia shall maintain purchasing procedures that comply with all state and federal law and reflect the policy directive of the Augusta Georgia Board of Commissioners.

## SECTION 1 - PURPOSE AND APPLICATION

### 1-101 PURPOSE

The purpose of this manual is to provide specific procurement guidance when the City uses FTA funds in support of the City's public transit system, Augusta Public Transit (APT). This manual is a supplement of the City's procurement policies and procedures. Efforts have been made to identify procurement process roles and responsibilities of City procurement staff and transit staff.

When the procurement transaction involves the expenditure of State or Federal funds, the transaction shall be conducted in accordance with any applicable mandatory State or Federal laws and authorized regulations. Notwithstanding where State and Federal assistance or contract funds are used in procurement transaction, any applicable local requirements that are more restrictive than State or Federal requirements, but not in conflict therewith shall be followed.

### 1-102 APPLICATION

The proceeding policy and these procedures apply to the procurement of all goods and services entered into by APT. It is consistent with and governed by Augusta, Georgia Code, Chapter 10 and when applicable the Federal Transit Administration Circular 4220.1 F. The policy shall apply to all expenditures of public funds for purchasing irrespective of the source of the funds. Nothing in this policy shall prevent APT from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law. Contracts awarded or procurements funded by FTA funds must comply with the requirements outlined in FTA Circular 4220; For contracts awarded or procurements funded by FTA funds, FTA requirements shall prevail over any provisions contained within this Procurement Policy that conflict with the FTA requirements. For all contracts awarded or procurements funded by FTA funds, 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 APT.

### 1-103 SUB-RECIPIENTS

APT shall maintain oversight of all sub-recipients and shall ensure compliance with all federal requirements. The DBE Liaison shall provide assistance to APT, as needed or requested.

## SECTION 2 - DEFINITIONS

### 2-201 DEFINITIONS

Abstract of Bids - document used to record the results of sealed bids for each bidder, which is subsequently made available for public inspection, after completion of the bid process.

APT – Augusta Public Transit; includes actions and or responsibilities to be taken by the Transit Contract Manager

Blind Trust - An independently managed trust in which the beneficiary has management rights and in which the beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

Brand Name or Equal Specification. A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet requirements of APT, and which provides for the submission of equivalent products.

Brand Name Specification. A specification limited to one or more items by manufacturer's names or catalog numbers effectively becoming a sole source.

Best Value Criteria: See Evaluation Criteria.

Business. Any for profit or non-profit corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

City – The City of Augusta; Augusta Richmond County Commission

Commission – will mean the Board of Commissioners of Augusta-Richmond County.

Confidential Information. Any information which is available to a director, officer, employee, or agent of APT only because of the person's status as a director, officer, employee, or agent of APT and is not a matter of public knowledge or available to the public on request or that is deemed to be confidential as a matter of the operation of Federal or State law.

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

Contract. All types of agreements between APT and other parties, regardless of what they may be called, for the procurement of supplies, services, or construction.

Contractor. Any person having a contract with APT or a using agency thereof; provided, however, the term "Contractor" shall not include any individual who is paid a salary and/or benefits by APT pursuant to a contract that provides for that individual's employment by APT.

Disadvantaged Business Enterprise (DBE). A for-profit small business concern:

- (a) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- (c) which has been certified as such by an organization acceptable by APT.

For the purpose of this definition, the phrases "small business concern" and "socially and economically disadvantaged individual" shall have the meanings given to those phrases in 49 C.F.R. §26.5.

Employee. Shall mean an individual employed by Augusta, Georgia Board of Commission.

Engineering Services. Those professional services within the scope of the practice of engineering as defined in Georgia Occupation Code, as amended.

Evaluation Criteria: Qualitative factors than evaluation committee will use to evaluate/score a solicitation and select the most qualified proposer. May include such factors as past experiences, references, management and technical capabilities, price, quality and performance requirements. Also called Best Value criteria

FTA – Federal Transit Administration – an operating administration of the U.S. Department of Transportation.

Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate Family. Spouse, children, parents, brothers and sisters.

Invitation to Bids (ITB). All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

Large Purchase – purchases over \$100,000 may include: Invitation to Bids (ITB), Request for Proposals (RFP), and Architectural and Engineering Services (A&E).

Local Government – includes a public transit agency as well as county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof.

Lowest Responsible Bidder: The responsive and responsible bidder whose bid is most economical for the purpose intended, according to criteria set forth in the solicitation. Determination of this status may involve all or some of the following factors: price, conformity to specifications, financial ability to meet the agreement, previous performance, facilities and equipment, availability of repair parts, experience, delivery promise, terms of payments, compatibility as required, other costs, and other objective and accountable factors which are reasonable.

Micro-Purchase – purchases / contracts that do not exceed \$3,000. May be made with Telephone Quotes.

Noncompetitive Proposals (sole source) - procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4220.1F.

Person. Any business, individual, union, committee, club, other organization, or group of individuals.

President. Shall mean the president of APT.

Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurement. The buying, purchasing, renting, leasing or otherwise acquiring of 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.

Purchase – will mean the procurement by purchase, lease, or otherwise of real or personal property by APT, and awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to APT.

Qualified Products List. An approved list of supplies, services, or construction items described by model or catalog numbers, which, prior to competitive solicitation, APT has determined will meet the applicable specification requirements.

Recipient - means APT or any organization receiving funds directly from FTA.

Request for Proposal (RFP). All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Request for Qualifications (RFQ). All documents, whether attached or incorporated by reference, utilized for soliciting statement of qualifications.

Responsible Bidder or Offeror. A person or company who has the capability in all respects to perform fully the requirement, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and financial ability which will assure good faith performance.

Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the solicitation.

Sale – will mean the sale, lease, or other disposition of any real or personal property by APT.

Services. 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.

Small Purchase – purchases / contracts between \$3,000 and \$10,000. Although FTA imposes the small purchase threshold at \$100,000, it is APT's policy to adopt a \$10,000 ceiling for such purchases.

Specification. Any description of the physical or functional characteristics or of the nature of a supply, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

Statute of Frauds – Generally, the Statute of Frauds is whether contracts should be oral or written. In order to be enforceable, the Statute of Frauds requires certain contracts to be written and signed by the party charged with performing the contract. For example, contracts for the sale of goods in excess of \$500 must be

in writing in order to be enforceable. (See Best Practices Procurement Manual, Section 1.2.2 for a list of other instances where Statute of Frauds apply.)

Sub recipient - any organization receiving FTA funds from APT, but does not include contractors or subcontractors. Sub agreement is the actual agreement between APT and the sub recipient<sup>2</sup>

Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Using Agency. Any department, commission, board, or public agency requiring supplies, services, or construction procured pursuant to this Policy.

Telephone Quote - quote for micro-purchase obtained by calling vendor, verbally stating specifications for goods or services in order to solicit a quote. Documentation for telephone quote must be recorded on "Micro Purchase" form.

Third party contract – any purchase order or contract awarded by APT to a vendor or contractor using Federal financial assistance awarded by FTA.

U.S. DOT – United States Department of Transportation

Written Quote - document submitted by vendor to APT in writing via fax, mail, or electronic means may be used for Micro or Small purchases.

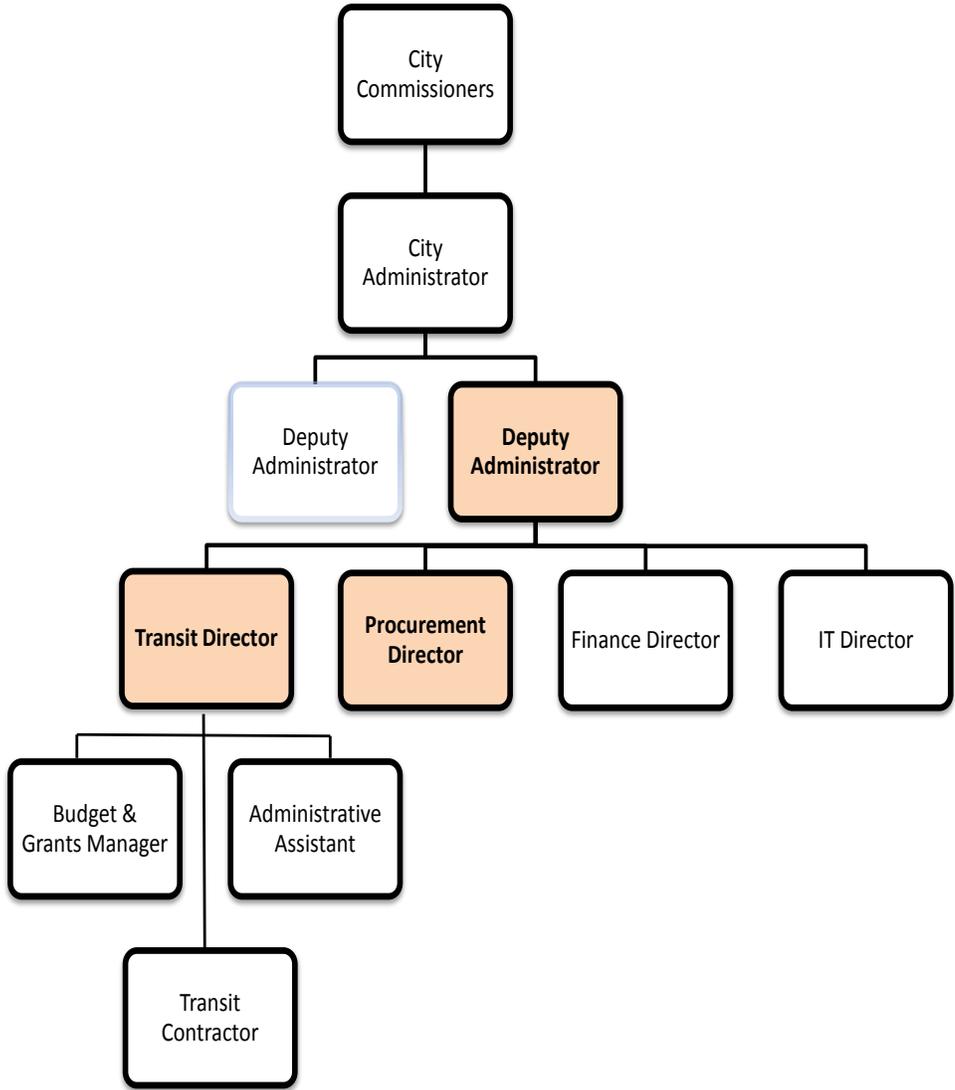
### **SECTION 3 ORGANIZATIONAL CHART AND ROLES RESPONSIBILITIES AND DELEGATION OF AUTHORITY**

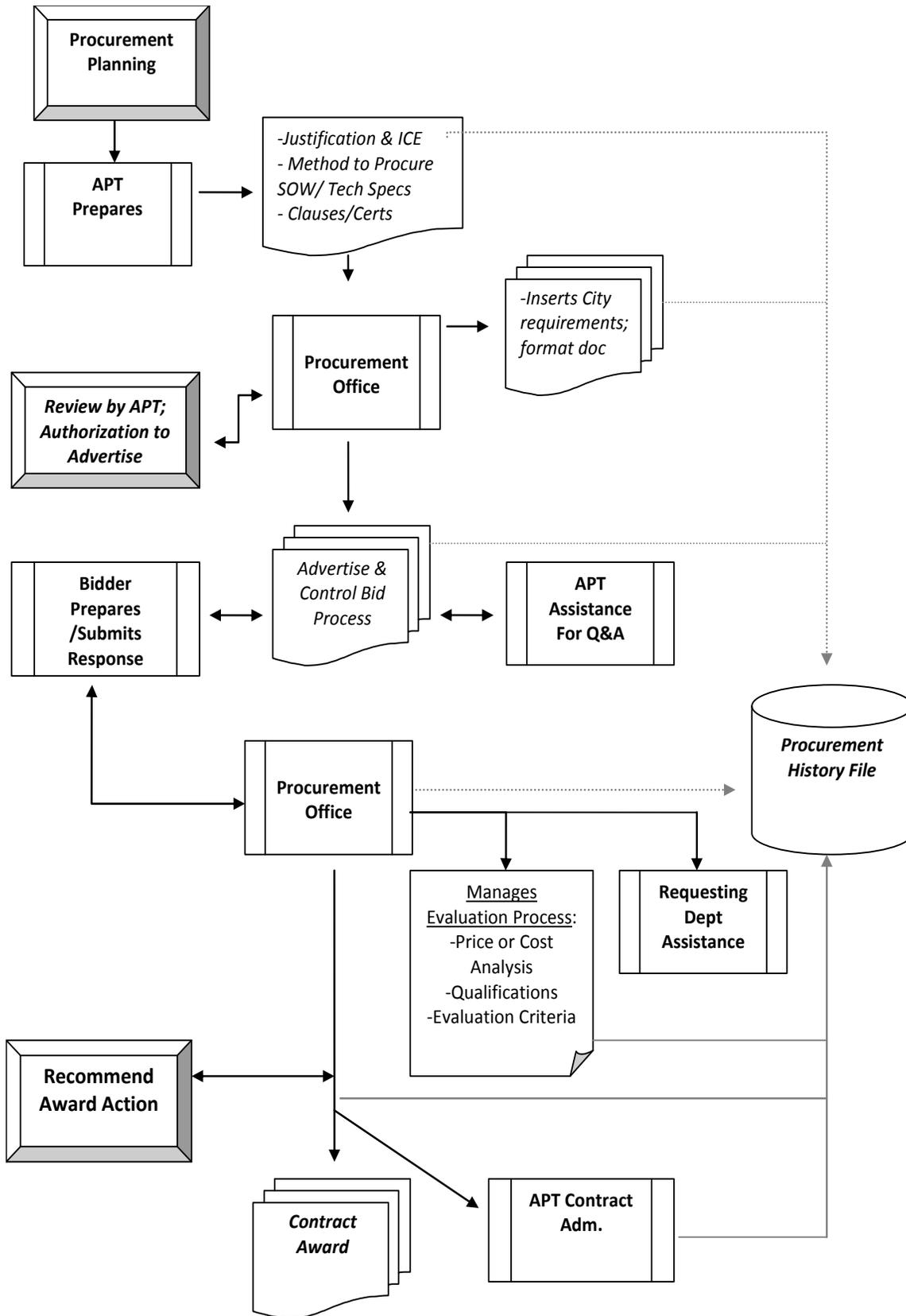
#### **3-301 ORGANIZATIONAL CHART**

The chart on Page 11 illustrates the relationship of departments within the Deputy Administrator's management scope.

#### **3-302 ROLES, RESPONSIBILITIES, AND DELEGATION OF AUTHORITY**

The City of Augusta utilizes two Deputy Administrators (DA) in its governance structure. The DA's report to the City's Administrator. One Deputy Administrator is responsible for the Departments of Finance, Procurement, Information Technology and Transit. With respect to managing the various procurement processes associated with federal compliance, the DA has delegated certain authority to the Transit Department to oversee the procurement process to ensure compliance to federal regulations including FTA Circular 4220.1F, as amended. The flowchart on Page 12 depicts a typical flow process for the Department of Transit's federal procurements.





### **3-303 ETHICS/STANDARD OF CONDUCT**

It is the policy of APT to adopt an arm's length relationship in regard to all suppliers, vendors, service companies, and passengers, with whom APT may have a relationship as part of its normal daily operations. It is important that APT not only remain free from all conflict of interest situations, but that APT must also remain free from the appearance of a conflict of interest.

### **3-304 PERSONAL CONFLICTS OF INTEREST**

No employee within APT may participate in such activities as contract specifications, solicitations, selection, or award, if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award: (1) an employee, officer, board member, or agent of APT; (2) any member of his or her immediate family; (3) his or her partner; (4) an organization that employs, or intends to employ, any of the above.

No employee within APT will make investments or act for personal gain based upon special knowledge obtained, whether directly or inadvertently, as a result of employment with APT.

No employee within APT will have any relationship or engage in any activity that might involve or lead to personal obligations that could impair the objectivity of such person's judgment, or imply to others that favoritism or obligations exist between such persons and third party contractors.

### **3-305 PROPER PERSONAL CONDUCT**

No employee within APT will solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements. Unsolicited gifts or items of nominal intrinsic value may be accepted. Entertainment in any form must not be accepted if either party might feel obligation or if third party might infer that an obligation exists.

### **3-306 ORGANIZATION CONFLICTS OF INTEREST**

When conducting business with third party contractors, disclosing information that may give them an unfair competitive advantage or that may impair its objectivity in performing contract work is prohibited.

Furnishing advice or services to a firm bidding on or planning to bid on a contract with APT, or which is currently doing business with APT is prohibited. Accepting employment with such third parties is considered a strong conflict of interest (bias) situation, and may result in extreme disciplinary action.

### **3-307 ISSUANCES OF STANDARDS OF CONDUCT**

APT will issue these standards as a pre-employment orientation document to be read and signed by each employee involved in the procurement process, and placed into his/her personnel file.

### **3-308 SANCTIONS FOR VIOLATION OF ETHIC / STANDARDS OF CONDUCT**

Anyone violating the regulations for proper ethics and standards of conduct will receive appropriate disciplinary action (i.e. written warning, termination, dismissal).

### 3-309 DISADVANTAGED BUSINESS ENTERPRISES

APT maintains a Disadvantaged Business Enterprises program. The program is updated, in accordance with 49 C.F.R. Part 26.

## SECTION 4 – GENERAL PROCUREMENT PRACTICES

### 4-101 GENERAL PROCUREMENT PRACTICES

#### A. Awards to Responsible Contractors

APT will assist the Procurement Department in ensuring that all procurement activities be entered into with responsible businesses, persons, and contractors. A responsible contractor is one which:

- Has adequate financial resources, or the ability to obtain such resources as required during the performance of the contract, if adequate security is not otherwise furnished;
- Is able to comply with the required or proposed delivery or performance schedule;
- Has a satisfactory record of performance or the equivalent, and
- Has a satisfactory record of and reputation of integrity.

#### B. Review of Procurement Requests to Avoid Duplicate or Unnecessary Purchases

APT has purchasing procedures for micro-purchases, small purchases, and large purchases (RFQ/RFP/A&E), respectively. Purchase requests for micro purchases are approved by the Transit Contract Manager. Small and large purchases are prepared by the Transit Contract Manager and approved by the Deputy Administrator. Because of the collaborative effort involved in conducting RFQ / RFP / A&E, it is not possible to make duplicate purchases under this process. In all cases, APT will ensure no staff member can independently request, approve, and receive purchases.

#### C. Competition; Non-Collusive Bids and Proposals

All purchases and sales, whether by formal advertising or otherwise, will be made on a competitive basis to the maximum practicable extent. In the event identical bids are submitted on any contract for the sale or purchase of property, the Procurement Director will report such fact to Augusta, Georgia's General Counsel if there is any reason to suspect collusion.

#### D. Splitting Purchases

Purchases will not be split, so as to place them in a smaller procurement category.

#### E. Purchase Orders

Purchase orders or other written request for purchases are required for all purchases. Blanket purchase orders may be issued for up to one year for some items such as office supplies and other regularly occurring services, goods that have been quoted or bid from a particular supplier. APT will ensure a not to exceed dollar amount is listed and will ensure efforts are made to solicit competition for open purchase orders. FTA small purchase clauses are to be printed on the back of the purchase order .

## 4-102 METHODS OF PROCUREMENT

### A. Micro-Purchases

Micro-purchases are purchases or contracts that do not exceed \$3,000. Purchases below that threshold may be made without obtaining competitive quotes, if APT determines that the price is fair and reasonable. The Davis-Bacon Act must be applied to construction contracts over \$2,000. Minimum documentation requirements include determination that the price is fair and reasonable, and how this determination was made.

Whenever feasible, it is APT's preference to complete a "Micro-Purchase" form documenting at least three telephone quotes, or obtain copies of at least three written quotes for such purchases. (See definition of written quote.) Subsequently, the Purchaser will complete a "Purchase Order" form. All micro-purchases with only 1 quote must include the "Fair and Reasonable Price Determination" Stamp, signed, dated, and the reason checked off.

If submitted electronically, the written quote must be printed. If the quote is obtained by telephone, the dates, names of vendors, addresses, phone numbers, and contact persons must be submitted for at least 3 vendors, and documented on the "Micro-Purchase" form.

Supporting documentation must be submitted with the purchase order to Accounting. Copies of purchase documents will be maintained in APT procurement files.

### B. Small Purchases

Small purchases, as defined in U.S. DOT / FTA 4220.1F, are purchases of services, supplies, or other property that exceed \$3,000, but not more than \$100,000. APT will adopt a maximum threshold of \$10,000 for small purchases. A minimum of three written quotes is necessary for small purchases.

Written quotes are documents submitted by the vendor to APT in writing via fax, mail, or electronic means. Documentation must be submitted to Accounting and also retained in APT files.

### C. Large Purchases

FTA Circular 4220.1F states that purchases over \$100,000 must provide for full and open competition. APT's policy is \$50,000 and greater for large purchases. These contracts will be

solicited by sealed bid or request for proposals. Independent estimates must be made before receiving bids or proposals, which may include bidders' estimates of the total cost of the service or project.

## 1. *General Requirements for all Large Purchases*

### a. Practices deemed restrictive of competition, and therefore not allowable include:

- Unreasonable requirements placed on firms in order for them to qualify to do business;
- Unnecessary experience and excessive bonding requirements;
- Noncompetitive pricing between firms or between affiliated companies;
- Noncompetitive awards to any person or firm on retainer contracts;
- Organizational conflicts of interest (also applies to micro and small purchases);
- Restrictive use of brand names (also applies to micro and small purchases);
- Any arbitrary action in the procurement process (also applies to micro and small purchases);
- Geographic preferences (With the exception of Architectural and Engineering services).

### b. Pre-qualification Criteria

If firms are required to pre-qualify to bid, or submit competitive proposals, the procedures and criteria for pre-qualifying will be kept on file and made available to potential bidders. APT will in such cases maintain a current list of pre-qualified firms, and will not preclude potential bidders from qualifying during the solicitation period.

### c. Specifications, Plans, and Drawings

Plans, drawings, or specifications will state only APT's actual minimum needs and will describe the property or service to be acquired or sold, as the case may be, in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to a relatively few bidders.

Where APT's requirements for a commodity can only be estimated, and bids are to be submitted based upon that estimate, the specifications for the commodity may provide that APT's requirements may vary within a given range from the estimate. Specifications and drawings with references to brand names, or items manufactured by a single company, will be used to the minimum extent feasible.

d. Purchase Description

A purchase description may be used in lieu of a specification where the use of a specification is not feasible. A purchase description should set forth the essential characteristics and functions of the items or materials required. Purchase descriptions will not be written so as to specify a product, or a particular feature of a product, explicit to one manufacturer, unless it is determined that the particular feature is essential to APT's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements of the item.

Generally, the minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words "**or equal.**" Where a "brand name or equal" purchase description is used, the "salient characteristics" of the brand name must be described so that bidders may offer an "or equal" product. Known, acceptable products should be listed.

e. Alternate Articles

Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or quantities of material (e.g., where two or more articles will be equally acceptable to APT depending upon relative price); however, the alternate articles or quantities must be precisely described to assure that the same degree of competition is obtainable.

f. Formal Advertising

Formal advertising means purchases and sales by competitive bids and awards, and involves the following steps:

- Determining whether an Invitation for Bid, Request for Proposal, or an Architectural and Engineering services process is appropriate;
- Preparation of the invitation for bids, describing APT's requirements clearly, accurately, and completely, but avoiding unnecessary restrictive specifications or requirements which might unduly limit the number of bidders;
- Publicizing the invitation for bids, through distribution to prospective bidders and advertising;
- Submission of bids by prospective contractors; and
- Awarding the contract, after the bids are publicly opened, to that responsible bidder whose bid, conforming with all material terms, and conditions of the invitations for bids, is the lowest in price, and;
- Where specified in the bidding documents, factors such as DBE participation, discounts, transportation costs, and life cycle costs will be considered in determining which bid is lowest.

g. Written Record of Procurement History

The purpose of maintaining written procurement records is to ensure a full history of the transaction is recorded and available in order to:

- Support actions taken by various employees of APT in connection with the purchase, sale, or contract;

- Provide information for reviews conducted by the Board or others having the right to conduct such reviews; and
- Furnish essential facts in the event of legal proceedings.

As provided for in FTA Circular 4220.1F, the extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements. For example, a receipt or bill accompanying a \$100 credit card purchase might contain all of the required information to support that procurement. Procurements that are more substantial may require extensive documentation.

Dependent upon the type of procurement activity, the following provides a listing of associated documents that will be maintained by the Procurement Department and located at the City's administrative offices.

- A copy of valid approval or request for the purchase, sale, or request, or appropriate preference
- Rationale for the method of procurement (e.g. sole source, IFB, RFP, piggyback, State GSA)
- Independent cost estimate
- Procurement selection and evaluation criteria
- Method of advertising
- Copy of advertisement language
- A list of the bidders solicited or a memorandum explaining why the list of bidders was limited
- A copy of the invitation for bids, or request for proposal, including any drawings and specifications
- Addenda issued
- Questions and answers provided to vendors
- Pre-bid or pre-proposal agenda, attendees, and meeting minutes
- One copy of each signed bid or proposal received
- A record of the abstract of bids
- Documentation of late bids
- Documentation of bid protests
- Written determination of reasonable and responsible responses
- Copies of certifications (e.g. Lobbying, Buy America, TVM, DBE program approval, and other rolling stock certification requirements)
- Debarment and Suspension verification documentation
- Evaluation discussions and scoring sheets
- Cost analysis
- A document showing the reasons for the selection of the successful contractor
- A copy of the contract or award
- Copy of insurance forms
- Copy of bid or other simple bonds
- All pertinent correspondence
- Copies of all changes or supplements to the contract, with supporting documents
- Any additional documents reflecting actions peculiar to the specific purchase or sale.

## 2. *Methods of Procurement for Large Purchases*

### a. Invitation for Bid (IFB)

In order to ensure that the sealed bidding process is feasible, APT will make every effort to ensure:

- a complete, adequate, and realistic specification or purchase description is provided
- Two or more responsible bidders are willing and able to compete effectively for the business
- The procurement lends itself to a firm fixed price contract when feasible, and the selection of the successful bidder can be made principally on the basis of price
- No discussion with bidders is needed

Contents of Invitation for Bid: Invitation for Bids will contain the following information, if applicable to the purchase involved:

- APT's address and name of issuing activity;
- Date of issuance;
- Date, hour, and place of opening;
- Description of the supplies or services to be furnished Time of delivery or performance requirements;
- Permission, if any, to submit alternate bids;
- Permission, if any, to submit telegraphic bids;
- Bid Guarantee, performance bond, and payment bond requirements
- Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference
- A statement that APT reserves the right to reject any or all bids; and
- A statement that APT reserves the right to cancel the invitation to bids, at its sole discretion, without penalty.
- A statement that bids received after the exact time set for opening are "*late bids*," and will not be considered for award, except in certain circumstances, such as registered or certified mail that was not delivered on a timely basis, or it was determined that there was mishandling on APT's part.
- A statement that any modifications or bid withdrawals must be received prior to the set time for bid opening.
- Standard contract provisions provided by the Federal Transit Administration, as applicable. APT will access boilerplate instructions and conditions that contain general and special provisions for certain contract types.
- In the case of sales, the invitation for bids will contain a description of the property to be sold by APT in sufficient detail to permit full and free competition.

Methods for Soliciting Invitations for Bids - Formal advertising is required in a newspaper of general circulation in the metropolitan area. A reasonable number of copies of invitations for bids, including specifications and other pertinent information, will be maintained at APT's administrative office. Upon request, prospective contractors not initially solicited may be provided copies of such invitations for bids to the extent they are available.

Receipt and Safeguarding of Bids - will be as follows:

- All bids (including modifications) received prior to the time of opening will be kept secure, and except as provided in the paragraph below, unopened.
- If an invitation for bids is canceled, or if a bidder effectively withdraws their bid in accordance with the specifications set forth, all bids, or the withdrawn bid, as the case may be, will be returned to the bidder(s).
- Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Procurement Director.
- If a sealed bid is opened by mistake, the person who opens the bid will immediately write his/her signature and position on the envelope, along with the date and time opened, as well as an explanation of why/how it was opened. The envelope will then be delivered to the Procurement Director, and will be resealed.

Opening of Bids - The following steps are taken in regard to the opening of bids:

- The Procurement Director and/or a designee will decide and set the time for bid opening, and will so declare to those present. He/she or a designated official of the Procurement Department will then personally and publicly open all bids received prior to that time, and when practicable, read them aloud to the persons present, and have the bids recorded. The original of each bid will be carefully safeguarded until the Abstract of Bids has been made and its accuracy verified.
- Examination of bids by interested persons will be permitted if it does not interfere unduly with the performance of the Department's business. However, original bids will not be allowed to pass out of the hands of an official of the Procurement Department, unless a duplicate bid is not available for public inspection. In such cases, the original bid may be examined by the public only under the immediate supervision of an official of the Procurement Department, and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.
- Bids will not be opened if a protest is received within the time limits specified in the protest procedures within this document.

Recording of Bids - All legitimate bids will be abstracted and recorded on the "Abstract to Bids" document. Information recorded will include:

- An identification of the invitation for bids;
- Opening date
- General description of the item/contract being purchased or sold
- Names of each bidder
- Prices bid
- And any other information required by bid evaluation

When the items are too numerous to warrant the recording of all bids completely, entry should be made of the opening date, general description of the material, item number, and the price bid. The abstract will be completed as soon as practicable after the bids have been opened. When all bids have been opened, the Procurement Director will so certify on the abstract.

Award of Bids - In the awarding of bids, the City will execute the following actions:

- Unless all bids are rejected, award will be made by the Procurement Director, within the time for acceptance specified in the bid, or extension thereof, to the responsible bidder whose bid, conforming to the invitation for bids, is the lowest bidder. Awards given to the “other than lowest bidder” are addressed in a succeeding section in this document.
- Awards will be formally documented in writing and transmitted via mail. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid will be clearly and accurately set forth (either expressly, or by reference in the formal award document),
- since the award is an acceptance of the bid, and the bid and award constitute the contract.

Amendment of Invitation for Bids - If after issuance of an invitation for bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specification, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes will be accomplished by issuance of an amendment to the invitation for bids. The amendment will be sent to everyone to whom invitations have been furnished. The following actions will also be taken:

- Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening, and the need for extending this period must be considered.
- Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegram, facsimile, telephone, or electronic mail. Such notification should be confirmed in the amendment.
- Acknowledgement of receipt of the amendment of invitation for bid should be received from each bidder.
- Any information given to a prospective bidder concerning an invitation for bids will be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to the bidder in submitting bids on the invitation, or if the lack of such information would be prejudicial to uninformed bidders.
- No award will be made on the invitation, unless such amendment has been issued in sufficient time, to permit all prospective bidders to consider such information in submitting, or modifying their bids.

Cancellation of Invitations Before Opening – The Procurement Department will include in all solicitations for invitations for bid, a statement that the City reserves that right to cancel the solicitation without penalty, at its sole discretion.

Since cancellations of an invitation for bids usually involves the loss of time, effort, and money spent by the City and bidders in carrying the bidding process up to the point of cancellation:

- Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the supplies or services, or where amendments to the invitation would be of such magnitude that a new invitation is desirable.
- When an invitation is canceled prior to bid opening, bids that have been received will be returned unopened to the bidders, and a notice of cancellation will be sent to all prospective bidders.
- The notice of cancellation will identify the invitation for bid, briefly explain the reason for cancellation, and where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any future requirements for the type of material or services involved.

Modification or Withdrawal of Bids - Bids may be modified or withdrawn in writing, by telegraphic, by telecommunication, by facsimile, or by electronic mail. Modifications or withdrawals must be received by the Procurement Department no later than the exact time set for opening of bids.

Acceptable procedures for modification or withdrawal of bids are as follows:

- Modifications received by telegram, including a record of those telephoned by the telegraph company, or by facsimile transmission, or by printed electronic mail, will be sealed in an envelope by an official of the Procurement Department who will write thereon the date and time of receipt and by whom, the invitation for bid number, and his/her signature. No information contained therein will be disclosed prior to the time set for bid opening.
- A bid may be withdrawn in person by a bidder or his/her authorized representative, provided his/her identity is made known, and he/she signs a receipt for the return of the bid, but only if the withdrawal is prior to the exact time set for opening of bids.

Rejection of All Bids – The City recognizes that the preservation of the integrity of the competitive bid system indicates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, or in the case of a sale, to that responsible bidder who made the highest responsive bid.

Every effort will be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby preventing the unnecessary exposure of bid prices.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where the Procurement Department determines in writing that:

- Inadequate or ambiguous specifications were given in the invitation;
- The supplies or services being purchased are no longer required;
- All otherwise acceptable bids received are at unreasonable prices;
- Reasonable evidence exists that bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- For other reasons, cancellation is clearly in the best interest of the City.

Rejection of Individual Bids - Any bid which fails to conform to the essential requirements or specifications of the invitation for bids will be rejected, unless the invitation authorized the submission of alternate bids. Alternate bids must meet the requirements specified in the invitation. Other reasons for rejection of individual bid may include:

- Any bid which fails to conform to the delivery schedule or permissible alternates thereto stated in the IFB will be rejected as non-responsive.
- Bids where the bidder attempts to impose conditions that would modify requirements of the IFB, or limit his/her liability to the City
- Fails to state a price and in lieu thereof, states that the price will be “price in effect at time of delivery” or equivalent; or
- States a price but qualifies such price as being subject to “price in effect at time of delivery,” or equivalent. A low bidder may be requested to delete objectionable conditions from his/her bid, provided these conditions do not go to the substance, as distinguishable from the form of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid, where it affects price, quantity, quality, or delivery of the item offered.
- Any bid may be rejected if it is determined that the price is unreasonably high.
- Low bids received for concerns determined to be not responsible, as stated in the section on Responsible Bidders, will be rejected.
- Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the IFB, the bid will be rejected.

The originals of all rejected bids, and any written findings with respect to such rejection, will be preserved in the contract file.

Disposition of Late Bids - Late bids which are not considered for award will be held unopened until after award, and then returned to the bidder, unless other disposition is requested, or agreed to by the bidder. An unidentified bid however may be opened solely for the purpose of identification. The following will, if available, be included in the contract file with respect to each late bid:

- A statement of the date and hour of mailing, filing, or delivery, as the case may be;
- A statement of the date and hour of receipt;
- The determination of whether or not the late bid was considered for award, with supporting facts;
- A statement of the disposition of the late bid; and
- The envelope or covering, if the late bid was considered for award.

Minor Informalities or Irregularities in Bids - A minor informality is one which is merely a matter of form, or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on the price, quantity, quality, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to other bidders. The Procurement Director will either give the bidder an opportunity to correct the deficiency, or waive any such deficiency, where it is to the City's advantage.

Mistakes in Bids - After opening of bids, the Procurement Director will examine all bids for mistakes. In cases of apparent mistakes, and in cases where there is reason to believe that a mistake may have been made, he/she will request from the bidder a verification of the bid,

calling attention to the suspected mistake. If the bidder alleges a mistake, the matter will be processed in the manner set forth below. Such actions will be taken prior to award:

The Procurement Director may correct any clerical mistake apparent on the face of a bid, if he/she has first obtained from the bidder, verification of the bid actually intended. Examples of such apparent mistakes are:

- Obvious error in placing decimal point;
- Obvious reversal of price f.o.b. destination and the price f.o.b. factory;
- Obvious error in destination of unit.

Correction will be reflected in the award document.

The Procurement Director, with the advice of Augusta Georgia's General Counsel, is authorized to make the following administrative determination in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award:

- Where an official of the City knows, or has reason to suspect, that a mistake in a bid has been made, a "Request for verification in bid" may be submitted to assure that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. In such case, a written request to the bidder that it verify its bid price will be prepared and submitted.
- Where the bidder requests permission to withdraw a bid, and clear and convincing evidence establishing the existence of a mistake, a determination permitting the bidder to withdraw his/her bid may be made;
- If the evidence is clear and convincing, as to the existence of a mistake, and as to the bid actually intended, and if the bid, (whether corrected or uncorrected) is the lowest bid received, a determination may be made to correct the bid and not permit its withdrawal.
- Where the bidder requests permission to correct a mistake in his/her bid, and clear and convincing evidence establishes the existence of a mistake, and as to the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the event such correction would not result in displacing one or more lower bids. If the evidence of the mistake, and the bid actually intended are not ascertainable substantially from the invitation and bid itself as opposed to evidence brought to City in response to a request for verification, correction will not be allowed.
- If the evidence is clear and convincing only as to the mistake, but not as to the intended bid determination permitting the bidder to withdraw his/her bid may be made.
- Where the evidence is not clear and convincing that the bid as submitted was not the bid intended, a determination may be made requiring that the bid be considered for award in the form submitted.

Change Order Policy - Changes to contract agreements after the award is announced must be approved by the Transit Contract Manager. All change orders must be documented in writing, be supported by a written justification, including a cost or price analysis, and signed and dated by the authorized officials.

b. Request for Proposals (RFP)

Large purchases may be procured through competitive proposal/request for proposals, when conditions are not appropriate for the use of sealed bids. In such cases, either a fixed price, or cost reimbursement type contract is awarded.

Publicizing the Proposal: Proposals will be advertised in metropolitan newspapers, as well as solicitation from an adequate number of qualified sources.

Selection Criteria – The Procurement Department will list, in the request for proposals, the selection criteria. Price should always be a selection criterion.

The Procurement Department may list selection criteria in the request for proposals, in order of priority with weights, if any.

Evaluation of Proposals - Criteria for evaluation of proposals will be established prior to a request for proposals, and may include:

- Responsibility criteria, such as financial, human, and physical capabilities to perform the contract.
- Technical criteria - may include the technical experience of the proposer, the suitability of the products or methods proposed for APT's needs, or objective performance criteria (fuel efficiency, percent savings guaranteed, proven ridership increases, etc.).
- Price criteria - price must be evaluated, unless the Brooks Act applies (where price is only considered after the most qualified proposer is selected for procurement of A&E services). Awards will be made to the responsible firm whose proposal is most advantageous to APT's program, with price and other factors considered.
- Compliance criteria - will include responsiveness to proposal requirements.
- Management criteria - may include the qualifications of the project managers, the budget and schedule performance proposed and recorded on past projects, and the projected effectiveness of the management plan proposed.
- Award of Proposals – The City will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed agreement. Consideration will be given to such factors as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Additionally, as stated above, awards will be made to the responsible firm whose proposal is most advantageous to APT's program with price and other factors considered.
- Request for Revised Proposals - In the event APT finds it necessary to revise an initial request for proposal because of deficiencies, the decision to do so will be approved by the Transit Contract Manager, and the deficiencies must be listed and explained.
  - A complete revised proposal, including price (except under the Brooks Act) will be requested from each offeror in the competitive range.
  - Unless explicitly stated otherwise, the revised offer extinguishes the prior offer.
  - The proposer should identify all changes in the revised offer.

APT may exercise the right to request revised proposals as many times as necessary in order to obtain the most advantageous offer.

- Discussions and Clarifications (negotiations) – The City will exercise its right to hold discussions for clarifications with all offerors in the competitive range. At such time, negotiations and bargaining may be made. At which time, the offeror will have an opportunity to revise or modify his/her proposal. The discussions and negotiations may initially be written or oral, with appropriate documentation following the discussions. Strict confidentiality in such cases will be maintained. Emphasis will be made known to the offeror that the name and number of proposals received is not normally considered a public record and need not be released to competitors or the public at large.
- Request for Best and Final Offer - A best and final offer (BAFO) may be requested from each offeror in the competitive range at the conclusion of discussions (negotiations) with those offerors. If an offeror does not respond to the request, the City may consider the most recent offer to be the best and final offer. The request for best and final offer will include:
  - Specific notice that discussions are concluded;
  - Notice that this is the opportunity for the offeror to submit a best and final offer;
  - A definite, common cutoff date and time that allow a reasonable opportunity for the preparation and submission of the best and final offer, and
  - Notice that the final offer must be received at the place designated by the time and date set in the request and is subject to any provisions dealing with the submissions, modifications, and withdrawals of proposals set forth in the solicitation.

Following receipt of the best and final offers, officials of the City will evaluate them in accordance with terms of the solicitation and recommend award in accordance with those terms. The City will make every attempt to submit only one request for best and final offer, however, in the event additional technical or price/cost related issues surface as a result of the offerors' final submissions or other factors that preclude a reasonable justification for contractor selection and award, the City may submit request for subsequent best and final offers, as it may be clearly in the best interest of the City.

- Award Based on Initial Proposals – The City may accept one of the initial proposals if it can be demonstrated that acceptance of the most favorable initial proposal without discussion will result in a fair and reasonable price. Solicitations for proposals will contain a notice that award may be made without discussion of proposals received, and that proposals should be submitted initially on the most favorable terms possible, from a price and technical standpoint.
- Withdrawal of Proposal - In order to avoid frivolous offers, or offers submitted with the sole intention of casting light on other offers, the solicitation for the request for proposals will state a date and time by which offers must be submitted, and a period following that date during which offers remain firm. Proposers will be allowed to withdraw or modify their proposals up to the time due. However, it will also be stated that after that date all proposals are firm and cannot be withdrawn, regardless of whether the proposer has had second thoughts.
- Debriefing Unsuccessful Offerors – The City will maintain complete records on its award decision, and how it came to that decision. The City will remain as objective as possible in making that decision. In the event a proposer was excluded from competitive range, and

requests a debriefing, the Transit Contract Manager and Procurement Director will offer a candid explanation of the process. However, if the Procurement Department foresees that a dispute is probable, it is not required to notify or debrief unsuccessful offerors.

c. Procurement of Architectural and Engineering Services (A&E)

When procuring architectural, engineering, or related services, APT will use competitive proposal procedures based on the Brooks Act, as defined in 40 U.S.C. §541. Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. Provided a sufficient number of qualified firms are eligible to compete for the third party contract, the contractor's geographic location may be a selection criterion.

The Brooks Act requires that:

- An offeror's qualifications are evaluated;
- Price is excluded as an evaluation factor;
- Negotiations be conducted with only the most qualified offeror; and
- Failing agreement on price, negotiations with the next most qualified offeror must be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the City.

This "qualification based procurement method" can only be used for the procurement of 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.

d. Procurement by Noncompetitive Proposals (Sole Source)

Procurement by noncompetitive proposals may be used 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:

- The item is available only from a single source (i.e. utility services, checking prior procurements for the same or similar items, no identical or compatible parts or equipment available from any other source);
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (i.e. health and safety concerns); and
- FTA authorizes noncompetitive negotiations.
- After solicitation of a number of sources, competition is determined inadequate, and after determining that the solicitation process was conducted appropriately, the City may enter into negotiations with a single bidder.

Sole Source Justifications

All sole source procurements must include a written justification and cost or price analysis

e. Single bids

In the event APT advertises through Invitation for Bid, or Request for Proposals, and receives only one bid, before award of such bid, the Transit Contract Manager will re-evaluate the process to determine if the requirements were too restrictive or if the invitation or proposal inadvertently disqualifies some potential competitors. Other factors that will be taken into consideration are the market conditions during the period of procurement, and comments from respective bidders regarding the requirements in the bid.

If it is determined that the initial invitation or proposal inadvertently disqualified some potential competitors, the requirements will be revised, and re-advertised. If after evaluation it is determined that the process and requirements set forth were not unnecessarily restrictive, the City may make a decision to award the contract to the single bidder. In such a case, a cost or price analysis will be performed, and determination that the price is fair and reasonable will be established, using the guidelines in the section on cost and price analysis. Documentation as to the reason for the single bid will be maintained.

f. Awards to Other than the Lowest Bidder

APT may award a third party contract to other than lowest bidder, when such an award is in the best interest of the City.

## **SECTION 5 – PROTEST PROCEDURES**

### **5-101 PROTEST PROCEDURES**

Protests concerning the City's purchasing policies, the contract requirements, the specifications, the bidding procedures, or the contract award, or any other request for explanation or clarification must be submitted in writing and must include the following information:

- The name and address of the protester.
- The name and telephone number of the protester's contact person having responsibility.
- A complete statement of the grounds of the protest with full documentation of the protester's claim.

A. Pre-award Protests

Pre-award protests must be received by the City no less than ten (10) working days before the scheduled bid opening. The City will respond to the protest in writing and render its final decision at least five (5) working days prior to bid opening. The City will report such protests to the FTA regional office.

B. Post-award Protests

Post-award protests will be received no later than five (5) working days after notification of the award bid. The City will have ten (10) working days after receipt of the formal protest package to evaluate, and issue a response, except in cases where the Board has awarded the original bid. In such cases, the decision to protest will be handled at the next regularly scheduled Board meeting, following completion of the staff review of the protests. The City will report such protests to the FTA regional office.

C. Appeals to FTA

It is the responsibility of the City to settle contract issues and disputes. The City is committed to using good sound administrative practices and business judgments, as well as professional ethics. Reviews of protests by FTA will be limited to alleged failure by the City to have followed proper protest procedures, or its failure to review a complaint or protest. Protesters dissatisfied with the City final decision may appeal to FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation.

## **SECTION 6– CONTRACT ADMINISTRATION**

### **6-601 CONTRACT ADMINISTRATION**

APT will actively manage all contracts and establish and maintain contract files. These files will contain documentation necessary for the Triennial Review including FTA certifications for Buy America, Lobbying, Bus Testing, FMVSS, TVM, Altoona Test Reports, Buy America content audits, purchaser’s certifications, and Debarment/Suspension contractor review (epls listing). The Transit Contract Manager may elect to assign certain contract administration responsibilities to the Grants Manager. See Appendix 1

## **SECTION 7 – CONTRACT CLAUSES**

### **7-701 CONTRACT CLAUSES**

A. Required Contract Clauses

APT’s Transit Contract Manager maintains a current list of required contract clauses applicable to contract type as required by the FTA. This position will provide a complete listing of each applicable clause and required supporting certification for all FTA-funded procurements to the County’s procurement department.

B. General Contract Clauses

APT will secure, when applicable, a boilerplate of general contract clauses for purchases where such a boilerplate would be beneficial during the solicitation.

C. Special Contract Clauses and Additional Special Contract Clauses

Special contract clauses may be applied selectively to purchases based on contract type or some other variable criteria. In the case of special contract clauses, the Transit Contract Manager may consult FTA rules and regulations and/or City General Counsel, before such clauses are incorporated into any contract agreement.

For FTA clause requirements see: Appendix D

## SECTION 8 – PROCURING EQUIPMENT OR MATERIALS USING OPTION CLAUSES

### 8-801 PROCURING EQUIPMENT OR MATERIALS USING OPTION CLAUSES

#### A. Definition of Option Contract

An option is a unilateral right in a contract by which, for a specified time, APT may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

#### B. FTA Requirements for Option Contracts

If APT elects to use option clauses in contracts, the FTA requires the following:

- Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered sole source procurement, and will be subject to a cost or price analysis before exercising.
- Exercise of Options. APT will ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award. It will also be determined that the option price is better than prices available in the market or that the option is the more advantageous offer prior to the option being exercised.

#### C. Purchasing Options on Other Grantee's Bus Procurement (Piggybacking, GSA)

In the event APT elects to purchase options on another grantee's bus procurement, APT may use said options after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements. APT is not required to perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects APT to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. APT will utilize the piggybacking guidance as set forth in the FTA's "Best Practices Procurement Manual" and Triennial Review Workshop for further information about procurements through assignment of another's contract rights.

## SECTION 9 – CONTRACT GUIDANCE

### 9-901 CONTRACT GUIDANCE

#### A. Maximum Length of Service and/or Supply Contracts

APT will not enter into either service or supply contracts with a period of performance exceeding five (5) years, inclusive of options, without prior written approval from FTA.

In instances where APT may find it feasible to extend a contract beyond five years, the Transit Contract Manager will request a waiver from the FTA regional office. Full documentation and justification for such waivers will be submitted in writing.

Contracts for rolling stock are not permitted for longer than five years. Specifically, APT may not exercise any options for rolling stock after five years from the date of the original award execution. However, delivery of vehicles is allowed after this date, as long as the contract or options for these vehicles were executed within five years of the original agreement execution date.

The five-year limitation does not apply to construction contracts or to leases of real property, (which period may extend beyond five years, as long as APT has “satisfactory continuing control over ownership of the property.”) Such lease agreements do not need prior approval of FTA.

#### B. Purchasing Extended Warranties with Capital Grant Funds

APT will not purchase any extended warranties with capital grant funds, unless it can be determined that such warranties do not exceed industry-accepted standards, and service agreements will extend the life of equipment or increase its value. For the most part, warranties and service agreements will be treated as a normal expense of operations.

In the case of warranty provisions for bus procurements, APT will adopt the American Public Transit Association’s (APTA) Standard Bus Procurement Guidelines, which have been accepted as industry standard by FTA, and are summarized as follows:

- Complete Bus - 1 year or 50,000 miles
- Body and Chassis (structural integrity) - 3 years or 150,000 miles
- Body and Chassis (corrosion/fatigue) - 12 years or 500,000 miles
- Propulsion System (i.e. engine, transmission, axles) - 5 years or 300,000 miles
- Major Subsystems (i.e. brakes, signs, heat, A/C, doors, air compressor/dryer, W/C lifts, ramps, starter, alternator) - 3 years or 150,000 miles

All RFPs, IFBs, and other solicitation documents and contracts will be maintained in the procurement files for purchase of such warranties or extended services.<sup>47</sup>

#### C. Payment Provisions In Contracts

##### 1. *Using Advance Payments*

APT will not enter into any contractual agreement to pay any or part of the payments prior to costs incurred by the contractor, unless prior written concurrence is obtained from the FTA Administrator

##### 2. *Using Progress Payments*

The two major types of progress payments are payments based on costs, and payments based on completion of work. FTA considers both types as contract financing methods. Instances in which APT may use progress payments in accordance with FTA guidelines are:

- When payments are only made to the contractor for costs incurred in the performance of the contract, and
- When APT is allowed to obtain title to property (materials, work in progress, and finished goods) for which progress payments are made. In lieu of obtaining a title, APT may require an irrevocable letter of credit or equivalent means to protect its interest.

### 3. *Prompt Payment*

In accordance with 49 CFR 26.29, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, grantees must have a contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the grantee. Grantees must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Therefore, APT will use one of the following methods to comply with this requirement:

- Decline withholding of retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
- Decline withholding of retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
- Withhold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor. In the event APT decides to withhold payments on a contract, it will ensure that the amount of money withheld bears a reasonable relationship to the unsatisfactory work (e.g. the amount withheld will represent a reasonable estimate of the contractor's potential liability). The amount withheld will not be so great however, such that it impairs the contractor's ability to perform.

### 4. *Final Payment*

Final payment will be made to the contractor when it has satisfied all of the deliverable requirements called for by all provisions of the contract, including all

required documentation. Before making final payment, APT may obtain a signed release from the contractor releasing it from further claims by the contractor.

## **9-902 OTHER CONTRACT TYPES**

### A. Revenue Contracts

A revenue contract is any contract whose primary purpose is to either generate revenues in connection with a transit-related activity or to create business opportunities using an FTA-funded asset. Examples

may include, advertising, concessions (food and newsstands), use of right-of-ways, licenses, and land and property leasing. APT will adhere to the following conditions regarding such contracts:

- No contract award will be entered into for any period beyond 5 years, with the exception of land or property leases, which may be extended beyond 5 years (see reference above in section on Maximum Length of Service and/or Supply Contracts);
- APT will use competitive selection procedures for award of such contracts; and
- APT will not exclude Disadvantaged Business Enterprises (DBEs) from participating in business opportunities by entering into long-term, exclusive agreements with non-DBEs for the operation of major transportation-related activities or major activities for the provision of goods and services.

#### B. Use of Time and Materials Type Contracts

APT will use time and materials type contracts only:

- After a determination that no other type contract is suitable; and
- If the contract specifies a ceiling price that the contractor will not exceed except at its own risk.

### **SECTION 10 PERFORMING INDEPENDENT COST ESTIMATES, COST AND OR PRICE ANALYSES**

#### **10-1001 COST ESTIMATE**

##### Independent Cost Estimate

APT will conduct an independent cost estimate (ICE) for all procurements regardless of dollar amount. The ICE is a tool to assist in the determination of the reasonableness or unreasonableness of a bid or proposal being evaluated. Independent cost estimates can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications and prior data. The independent cost estimate is especially critical whenever there is no price competition (e.g., for architect-engineer procurements where only one price proposal is received), or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-technology items or professional services). It is also useful in competitive procurements to alert the agency when all competitors are submitting unreasonably high cost proposals.

APT will conduct a cost or price analysis in connection with every Federal procurement action, including contract modifications. For small and micro purchases, refer to the appropriate sections.

#### **10-1002 COST ANALYSIS**

##### Cost Analysis

##### *1. When to Perform a Cost Analysis*

A cost analysis will 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; or
- Adequate price competition (2 or more bids or proposals) is lacking, and for 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 on the basis of prices set by law or regulation.

A price analysis may be used in all other instances to determine the reasonableness of the proposed contract.

## 2. *Cost Analysis Process*

Some common elements in performing cost analysis may include the following:

- Making an estimate based on inspection of the product itself (with technical guidance), review of drawings, specifications, and prior data (such as cost data from prior procurements);
- Review of each element of cost to determine whether the offeror's estimate contains an accurate and reasonable prediction of the cost incurred during performance; and/or
- Adding a rate of profit to the cost that has been determined to be fair.

All reasonable costs of performance can be considered, however, the cost will be consistent with Federal cost principles found in Federal Acquisition Regulation Part.

## **10-1003 PRICE ANALYSIS**

### A. Price Analysis

Some common price analysis techniques that may be considered may include:

- Comparison of proposed prices received in response to the solicitation;
- Comparison with competitive, published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements;
- Comparison of proposed prices with the cost estimate performed prior to solicitation, if it can be performed such that it can render a reasonable determination that the price is reasonable; and
- Comparison of proposed prices received with prior procurement actions for the same or similar end items, with consideration given to:
  - Changes in economic conditions between the times of the two procurements;
  - Differences in quantities; and
  - Inclusion on nonrecurring cost in the prices, such as design, capital equipment, production facilities, etc. To make a fair comparison, nonrecurring costs may be removed from both prices.

### B. Profit

APT will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where 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.

### C. Federal Cost Principles

APT will make every effort to ensure that all cost estimates included in negotiated prices are consistent with Federal cost principles. In doing so, APT will reference past and current cost principles that comply with applicable Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

## **SECTION 11 – PURCHASING/LEASING BUSES WITH FTA FUNDS**

### **11 – 1101 RENTAL/LEASING**

In certain situations, APT's equipment requirements may be more economically filled by rental/lease than by purchase. The decision to rent rather than purchase must be made on a case-by-case basis, and should only be used when it is in APT's best interest. A lease may qualify for capital assistance if it meets the following criteria:

- The capital asset to be acquired by lease is eligible for capital assistance
- There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect
- Leasing the capital asset is more cost-effective than purchase or construction of the asset.

APT identify in the grant all leasing needs and will obtain FTA review of the cost-effectiveness determination **prior** to entering into any capital lease.

A lease versus purchase analysis should be appropriate to the size and complexity of the procurement. In determining whether the lease of equipment is feasible, the following factors must be considered:

- Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
- Financial and operating advantages of alternative types and makes of equipment;
- Total rental/lease cost for the estimated period of use;
- Net purchase price, if acquired by purchase;
- Transportation and installation costs;
- Maintenance and other service costs;
- Trade-in or salvage value;
- Imputed interest costs; and
- Availability of a servicing facility especially for highly complex equipment (can APT service the equipment if it is purchased?)

## **11 – 1102 PURCHASING/LEASING BUSES WITH FTA FUNDS (BUS TESTING)**

To the extent applicable, APT agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA regulations, “Bus Testing,” 49 C.F.R. Part 665, and any revision thereto, for buses purchased or leased with FTA funds. APT will certify to FTA that any new bus model required to be tested has been tested at the FTA-sponsored test facility in Altoona, Pennsylvania.

A new bus model is a bus design variation of a bus design (usually designated by the manufacturer by a specific name and/or model number) that has not been in use in U.S. mass transit service prior to October 1, 1988, or that has been in service prior to that date, but is being procured with a major change in configuration or components. A new bus model must be tested.

Bus testing requirements apply to different mass transit vehicles including vans, other small vehicles, medium-light-duty mid-size buses, and heavy-duty small and large buses. Bus testing does not apply to unmodified mass-produced vans, bus prototypes, some electric buses, or trolley buses (meaning genuine trolleys, not replica trolleys popular today).

APT will maintain documentation in the procurement files to demonstrate how this requirement has been implemented. This documentation will indicate whether a bus model has been tested and whether testing is required. For buses that require testing, a copy of the test report must be obtained prior to acceptance of the buses and expenditure of Federal funds.

## **SECTION 12 BUY AMERICA PRE AWARD AND POST DELIVERY REQUIREMENTS**

### **12 – 1201 BUY AMERICA PRE-AWARD AND POST DELIVERY REQUIREMENTS**

APT will utilize FTA’s reference documents (per the hyperlink) to manage the Buy America requirements for rolling stock. [http://www.fta.dot.gov/legislation\\_law/12921\\_5424.html](http://www.fta.dot.gov/legislation_law/12921_5424.html)

## **SECTION 13 PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be a public record to the extent provided in Augusta, Georgia Code, Chapter 10, - Section 1-10-5 and, except for procurement information which may be withheld from disclosure by APT pursuant to federal or state law, shall be available to the public as provided in such statutes.

## **SECTION 14 RESPONSIBILITY OF BIDDERS AND PROPOSERS**

### **14-1401 DETERMINATION OF RESPONSIBILITY.**

The level of responsibility of the bidder or proposer shall be ascertained for each contract awarded by Augusta, Georgia based upon full disclosure to the Procurement Director concerning the person's capacity to

meet the terms of the contract and based upon the person's past record of performance on similar contracts, the bidder's quality of work, general reputation in the community, financial responsibility, and previous employment or use by Augusta, Georgia. If an offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Director or the using agency and submitted to the Procurement Director. The failure of an offeror to promptly supply information in connection with an inquiry with respect to the level of responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror or proposer. A copy of the determination shall be sent promptly to the non-responsible offeror. The final determination shall be made a part of Augusta, Georgia's contract file and be made a public record.

#### **14-1402 DETERMINATION OF NON-RESPONSIBILITY:**

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Purchasing Manager. The unreasonable failure of a bidder or offeror to supply prompt information in connection with an inquiry with respect to responsibility may be grounds for a determination of Non-responsibility with respect to such bidder or offeror. A copy of the determination shall be sent promptly to the non-responsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

#### **14-1403 RIGHT OF NONDISCLOSURE.**

Except as required by the Open Records Act, information furnished by an offeror pursuant to this Section shall not be disclosed outside of the Procurement Department, or using agency, by Augusta, Georgia staff without prior written consent by the offeror.

### **SECTION 15 GRATUITIES AND KICKBACKS**

#### **15-1501 GRATUITIES.**

It shall be unethical for any person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decisions, approval, disapproval, recommendation, preparation of any procurement, influencing the content of any specification or procurement standard, rendering of any advice, investigation or acting any advisory capacity or in any in any matter related to a contract, subcontract, solicitation or proposal.

#### **15-1502 KICKBACKS.**

It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor or contractor or any person associated therewith as an inducement for the award of a contract or subcontract. This prohibition against gratuities and kickbacks shall be contained in every solicitation and contract.

**SECTION 16  
BUY AMERICA – ROLLING STOCK**

**16-1601 BUY AMERICA**

Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States. Grantees must conduct pre-award and post-delivery audits of purchases of revenue rolling stock in order to verify that Buy America provisions, Federal Motor Vehicle Safety Standards, and purchaser's requirements are met..

**AREAS TO BE EXAMINED**

1. Buy America Provisions and Certifications
2. Pre-Award and Post-Delivery Audits of Revenue Rolling Stock

**SECTION 17  
OTHER WORK AND CHANGE ORDERS**

**ARTICLE 7 – OTHER WORK**

(Excerpt: General Conditions - Appendix 4)

***Related Work at Site:***

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by aided OWNERS or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work, and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

7.1.2. CONTRACTOR shall afford each utility OWNER and other contractor who is a party to such a direct contract for OWNER, if OWNER is performing the additional work with OWNER's employees, proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of PROFESSIONAL and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility OWNERS and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility OWNERS and other contractors.

7.2. If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility OWNER (or OWNER), CONTRACTOR shall inspect and promptly report to

PROFESSIONAL in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in the other work.

**Coordination:**

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither OWNER nor PROFESSIONAL shall have any authority or responsibility in respect of such coordination.

**ARTICLE 8 – OWNER'S RESPONSIBILITIES**

8.1. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through the PROGRAM MANAGER or PROFESSIONAL.

8.2. In case of termination of the employment of PROFESSIONAL, OWNER shall appoint a

PROFESSIONAL against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former PROFESSIONAL. Any dispute in connection with such appointment shall be subject to arbitration.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing Engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by PROFESSIONAL in preparing the Drawings and Specifications.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.8.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.3.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

**ARTICLE 9 – PROFESSIONAL'S STATUS DURING CONSTRUCTION**

***OWNER's Representative:***

9.1. PROFESSIONAL will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of PROFESSIONAL as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and PROFESSIONAL.

***Visits to Site:***

9.2. PROFESSIONAL will make visits to the site at intervals appropriate to the various stages of construction to observe the premises and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. PROFESSIONAL will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. PROFESSIONAL's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design PROFESSIONAL, PROFESSIONAL will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

***Project Representation:***

9.3. If OWNER and PROFESSIONAL agree, PROFESSIONAL will furnish a Resident Project Representative to assist PROFESSIONAL in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If OWNER designates another agent to represent OWNER at the site who is not PROFESSIONAL's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

***Clarifications and Interpretations:***

9.4. PROFESSIONAL shall issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be determined necessary, or as reasonably requested by CONTRACTOR, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification and interpretation entitles it to an increase in the Contract Price and/or Contract Time, CONTRACTOR may make a claim as provided for in Articles 11 or 12.

***Authorized Variations in Work:***

9.5. PROFESSIONAL may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

***Rejecting Defective Work:***



9.6. PROFESSIONAL will have authority to disapprove or reject Work which PROFESSIONAL believes to be defective and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

***Shop Drawings, Change Orders and Payments:***

9.7. In connection with PROFESSIONAL's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.29 inclusive.

9.8. In connection with PROFESSIONAL's responsibilities as to Change Orders, see Articles 10, 11 and 12.

9.9. In connection with PROFESSIONAL's responsibilities in respect of Applications for Payment, etc., see Article 14.

***Determinations for Unit Prices:***

9.10. PROFESSIONAL will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. PROFESSIONAL will review with CONTRACTOR PROFESSIONAL's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). PROFESSIONAL's written decisions thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other party to the Agreement and to PROFESSIONAL written notice of intention to appeal from such a decision.

***Decisions on Disputes:***

9.11. PROFESSIONAL will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes to the Contract Price or Contract Time will be referred initially to PROFESSIONAL in writing with a request for a formal decision in accordance with this paragraph, which PROFESSIONAL will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to PROFESSIONAL and the other party to the Agreement promptly (but in no event later than thirty days after the occurrence of the event giving rise thereto) and written supporting data will be submitted to PROFESSIONAL and the other party within sixty days after such occurrence unless PROFESSIONAL allows an additional period of time to ascertain more accurate data in support of the claim.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, PROFESSIONAL will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by PROFESSIONAL pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.



**Limitations on PROFESSIONAL's Responsibilities:**

9.13. Neither PROFESSIONAL's authority to act under this Article or elsewhere in the Contract Documents nor any decision made in good faith to exercise such authority shall give rise to any duty or responsibility of PROFESSIONAL to CONTRACTOR, any Subcontractor, any of their agents or employees.

9.14. PROFESSIONAL shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. PROFESSIONAL shall not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

9.15. PROFESSIONAL shall not be responsible for the acts or omissions of CONTRACTOR, any Subcontractors, any agents or employees, or any other persons performing any of the Work.

**ARTICLE 10--CHANGES IN THE WORK**

10.1. Without invalidating the Contract, OWNER may at any time or from time to time order additions, deletions, or revisions in the Work. The OWNER shall provide CONTRACTOR with a proposal request, identifying the Work to be added, deleted or revised. Upon receipt, CONTRACTOR shall promptly submit a written proposal for the changed work prepared in accordance with Articles 11 and 12. If the proposal request calls only for the deletion of Work, the OWNER may order the partial suspension of any Work related to the proposed deletion, in which case CONTRACTOR must cease performance as directed; CONTRACTOR shall not be entitled to claim lost profits on deleted work. All changed Work shall be executed under the applicable conditions of the Contract Documents.

10.2. Additional Work performed by CONTRACTOR without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Article 6. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents.

10.3. Upon agreement as to changes in the Work to be performed, Work performed in an emergency as provided in Article 6, and any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price, PROFESSIONAL will prepare a written Change Order to be signed by PROFESSIONAL and CONTRACTOR and submitted to OWNER for approval.

10.4. In the absence of an agreement as provided in 10.3, OWNER may, at its sole discretion, issue a Work Change Directive to CONTRACTOR. Pricing of the Work Change Directive will be in accordance with Section 11.3. The Work Change Directive will specify a price, and if applicable a time extension, determined to be reasonable by OWNER. If CONTRACTOR fails to sign such Work Change Directive, CONTRACTOR may submit a claim in accordance with Articles 11 and 12, but CONTRACTOR shall nevertheless be obligated to fully perform the work as directed by the Work Change Directive.

10.5. CONTRACTOR shall proceed diligently with performance of the Work as directed by OWNER, regardless of pending claim actions, unless otherwise agreed to in writing.

10.6. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## ARTICLE 11 – CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to written authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to PROFESSIONAL promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless PROFESSIONAL allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by PROFESSIONAL in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined by the following procedures:

11.3.1. Designated Unit Price (Field Measure). CONTRACTOR and OWNER recognize and acknowledge that the quantities shown for those items designated in the Bid Proposal as unit price items are approximations prepared by OWNER for bid purposes and that the actual compensation payable to CONTRACTOR for the utilization of such items is based upon the application of unit prices to the actual quantities of items involved as measured in the field and required to complete the Work as originally defined in the Contract Documents.

11.3.2. When it is determined by OWNER that an addition, deletion, or revision to the Work, as defined in these Contract Documents, is required and affects the quantities required for items designed in the Bid Proposal as unit price items, CONTRACTOR and OWNER agree that the compensation payable to CONTRACTOR for such unit price items shall be adjusted accordingly by a Change Order based upon the application of the appropriate unit prices shown in the Bid Proposal to the quantity of the unit price item required to complete the Work as defined in the Contract Documents.

11.3.3. Other Unit Prices. For items not designated in the bid proposal as unit prices, OWNER and CONTRACTOR may establish unit prices as agreed on by Change Order.

11.3.4. Lump Sum. When it is determined by OWNER that an addition, deletion or revision to the Work is required which results in a change in Work designated in the Bid Proposal as a lump sum item, the amount of increase or decrease in the lump sum price shall be established by mutual agreement of the parties.

11.3.5. If the pricing methods specified in 11.3 are inapplicable, or if the parties are unable to agree on a price for the changed work, a reasonable price for the same shall be established by OWNER in accordance with 11.4 and 11.5. OWNER shall then process a unilateral Change Order, specifying the said reasonable price, in accordance with 11.4 through 11.6. CONTRACTOR shall perform the Work as directed in the Change Order.

11.3.6. Failure on the part of CONTRACTOR to construct any item to plan or authorized dimensions within the specification tolerances shall result in: reconstruction to acceptable tolerances at no additional costs to OWNER; acceptance at no pay; or acceptance at reduced final pay quantity or reduced unit price, all at the discretion of OWNER. Determinations of aggregate monetary change for items identified as lump sum quantities shall be made by OWNER based upon an analysis of the scope of CONTRACTOR's failure to construct to plan or authorized dimensions.

**Cost of the Work:**

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. Trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who then determines, with the advice of PROFESSIONAL, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.



11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of PROFESSIONAL, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof-all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.6) provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums of property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with paragraph 5.6.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4-all of which are to be considered administrative costs covered by CONTRACTOR's Fee.

11.5.2. Expenses of CONTRACTOR's principal area branch offices other than CONTRACTOR's office at the site.

11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR'S capital used for the Change Order Work and charges against CONTRACTOR for delinquent payments.

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly, employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

**CONTRACTOR's Fee:**

11.6. CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee, or if none can be agreed upon;

11.6.2. a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, CONTRACTOR's Fee shall be fifteen percent,

11.6.2.2. for costs incurred under paragraph 11.4.3, CONTRACTOR's Fee shall five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent,

11.6.2.3. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.3,

11.6.2.4. the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease, and

11.6.2.5. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7. For all changes, CONTRACTOR shall submit an itemized cost breakdown, together with supporting data in such detail and form as prescribed by the Project Manager. When a credit is due, the amount of credit to be



allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the Project Manager, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

### **Cash Allowances:**

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to PROFESSIONAL CONTRACTOR agrees that:

11.8.1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site and all applicable taxes; and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by PROFESSIONAL to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

### **Unit Price Work:**

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by PROFESSIONAL in accordance with Paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3. Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

## **ARTICLE 12--CHANGE OF CONTRACT TIME**

12.1. The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to PROFESSIONAL and OWNER within seven (7) calendar days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to PROFESSIONAL and OWNER within fifteen (15) calendar days after such occurrence unless the OWNER allows additional time. All claims submitted by CONTRACTOR for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay and clearly indicate why the subject delay was beyond CONTRACTOR's control or fault.

12.2. If CONTRACTOR is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of OWNER or PROFESSIONAL, or by an employee of either, or by any separate CONTRACTOR employed by OWNER, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by CONTRACTOR using reasonable diligence, or any causes beyond CONTRACTOR's control or fault, then the Contract Time shall be extended by Change Order for such reasonable time as OWNER may determine. CONTRACTOR shall be entitled to an extension of time for such causes only for the number of days of delay which OWNER may determine to be due solely to such causes and only to the extent such occurrences actually delay the completion of the Work and then only if CONTRACTOR shall have strictly complied with all the requirements of the Contract Documents. Provided, however, notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which OWNER or PROFESSIONAL may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole and exclusive remedy against OWNER for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension to the Contract Time in accordance with the procedures set forth herein.

# Change Orders

## Flow Chart & Related Activities

Potential Need for change order arises

Identify the Need for a Change Order

- A. Limited Change in Work
- B. Change in Price
- C. Change in Time

Change identified and options evaluated

Obtain approvals per Change Order

Change formalized with Change Order

Meet with Contractor to discuss the change and negotiate price/time

Project Manager (PM) recommends/approves changes for construction projects. PM forwards to Director for approval with supporting documentation/justification of the change in work, price and time. Director Approves Change Order (**Mandatory Approval for Project oversight**)

Change Orders for consideration below \$25,000 may be approved by the Administrator upon recommendation by the User Department Director.

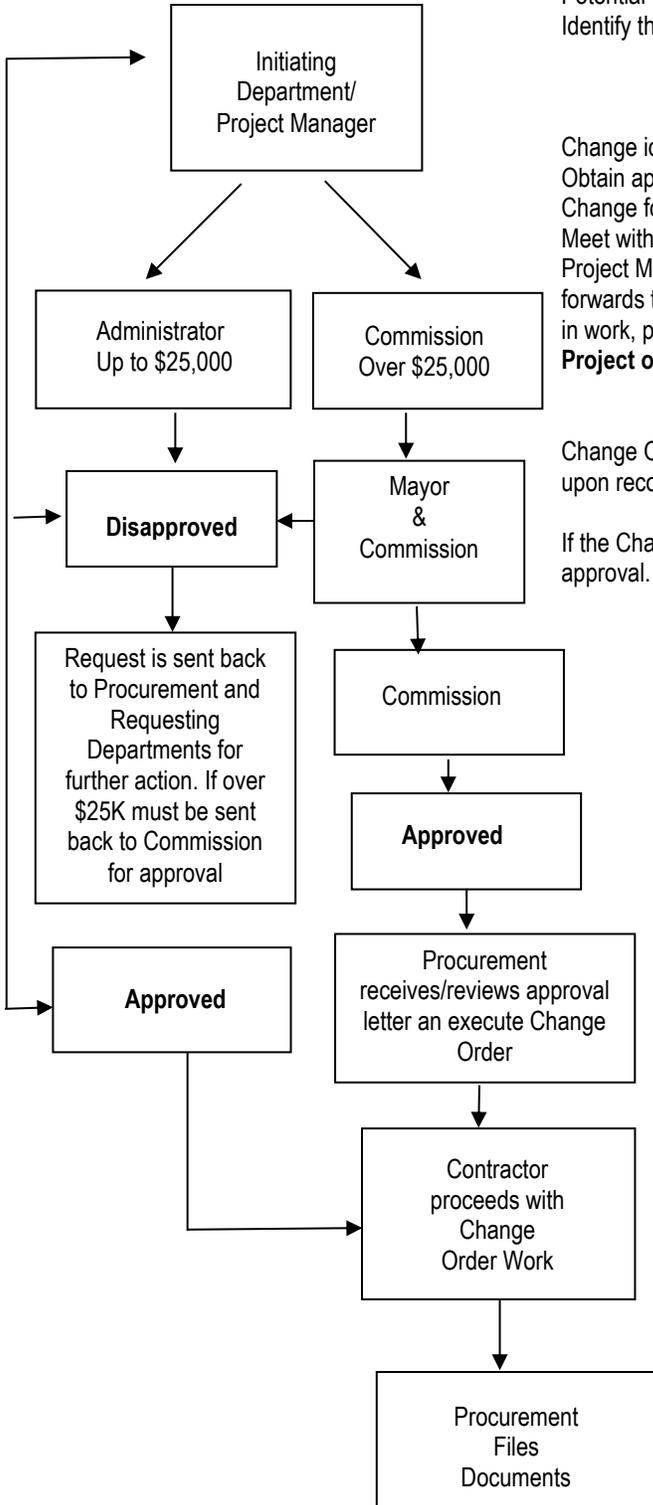
If the Change Order is over \$25,000, it will go before the Mayor and Commission for approval. (Allow 10 days for Commission)

Change Order is received in final for consideration.

Finance Department approves; submit proper budget and assign Sales Tax Funds & Project #/Job Ledger #  
Sent to Purchasing for Change to the Purchase Order  
Sent to Committee to Commission

See Section 17 - Articles:

- 7 - Other Work
- 8 - Owner's Responsibilities
- 9 - Professional's Status during Construction
- 10 - Changes in the Work



## SECTION 18

### FTA BOND REQUIREMENTS

#### Augusta, Georgia Code (Excerpt)

##### **Sec. 1-10-8. Compliance with State and Federal Requirement.**

When the procurement transaction involves the expenditure of State or Federal funds, the transaction shall be conducted in accordance with any applicable mandatory State or Federal laws and authorized regulations. Notwithstanding where State and Federal assistance or contract funds are used in procurement transaction, **any applicable local requirements that are more restrictive than State or Federal requirements, but not in conflict therewith shall be followed.**

Bonds for FTA projects shall be followed in the following manner:

#### FTA Bonding Requirements

##### Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" 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 will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to 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. Payment bond amounts required from Contractors are as follows:
  1. 50% of the contract price if the contract price is not more than \$1 million;
  2. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  3. \$2.5 million if the contract price is more than \$5 million.
- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

## Flow Down

Bonding requirements flow down to the first tier contractors.

## Model Clauses/Language

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

### Bid Bond Requirements (Construction)

#### a. Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

#### b. Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) 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 [ninety (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 [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) 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 security 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 on this form, other than that requested will render the bid unresponsive.

### Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

#### a. Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a 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 penal amount of the existing bond or to obtain an additional bond.

a. Payment bonds

1. The penal amount of the payment bonds shall equal:
  - i. Fifty percent of the contract price if the contract price is not more than \$1 million.
  - ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - iii. Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

**Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

a. The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

b. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a 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 penal amount of the existing bond or to obtain an additional bond.

c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
  - i. Fifty percent of the contract price if the contract price is not more than \$1 million;

- ii. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- iii. Two and one half million if the contract price is increased.

### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to

(Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

---

## REFERENCES

U.S. DOT FTA Circular 4220.1F - Third Party Contracting Requirements – November 1, 2008/Rev. April 14, 2009; as amended

U.S. DOT FTA Master Agreement FY 2011; as amended

U.S. DOT FTA Best Practices Procurement Manual, as amended

U.S. DOT FTA Triennial Review Workbook, 2012

U.S. DOT FTA Triennial Review Workbook, 2015

U.S. DOT FTA 49 C.F.R 18 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

U.S. DOT FTA Circular 5010.1D - Grant Management Guidelines, November 1, 2008/Rev. 1 August 27, 2012

FTA C 4220.1F. November 1, 2008. Rev. 1, April 14, 2009. Rev. 2, July 1, 2010. Rev. 3, February 15, 2011. Rev. 4, March 18, 2013. Subject: THIRD PARTY ...

[49 CFR Part 661](#), “Buy America Requirements”

2. [49 CFR Part 663](#), “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases”

3. [FTA “Dear Colleague” Letter, March 18, 1997](#)

4. [Federal Register Vol. 71, No. 54, pp. 14112-14118](#), Buy America Requirements; Amendments to Definitions

5. [Federal Register Vol. 72, No. 182, pp. 53688-53698](#), Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule

6. [Federal Register Vol. 72, No. 188, pp. 55103-55104](#), Buy America Requirements; End Product Analysis and Waiver Procedures, Final Rule correction

### USEFUL WEB LINKS

[FTA Buy America Home Page](#)

[Best Practices Procurement Manual](#)

[Conducting Pre-Award and Post-Delivery Audits for Bus Procurements](#), FTA T-90-7713-93-1, Rev. B

[Conducting Pre-Award and Post-Delivery Audits for Rail Vehicle Procurements](#), FTA DC-90-7713-94-1, Rev. B

[FTA Third Party Contracting FAQs](#)

### COMPLIANCE

If a grantee fails to comply with FTA Buy America requirements, FTA may decide to not participate in the procurement.

**Page Left Blank Intentionally**



# ATTACHMENTS

DESCRIPTION	
A	PIGGYBACKING WORKSHEET
B	DOCUMENT CHECKLIST FOR FTA-FUNDED PIGGYBACK PROCUREMENT
C	CHECKLIST FOR GDOT/GSA
D	FTA TYPE OF PROCUREMENT CLAUSES
E	INDEPENDENT COST ESTIMATE FORM
F	PRICE ANALYSIS
G	SOLE SOURCE JUSTIFICATION AND APPROVAL FORM
H	COST ANALYSIS FORM and GUIDELINES
I	SOLICITATION FILE CHECKLIST
J	ROLLING STOCK
K	PRE-AWARD AND POST-DELIVERY REVIEW CHECKLIST – Rolling Stock
L	CERTIFICATE OF COMPLIANCE WITH BUS TESTING REQUIREMENT
M	FEDERAL MOTOR VEHICLE SAFETY STANDARDS
N	FEDERAL CERTIFICATE BUY AMERICA CERTIFICATION
O	DEBARMENT AND SUSPENSION CERTIFICATION
P	DEBARMENT AND SUPSPENSION CERTIFICATION (Lower-Tier)
Q	NON-COLLUSION AFFIDAVIT
R	CERTIFICATION REGARDING LOBBYING
S	DBE APPROVAL CERTIFICATION
T	PROMPT PAYMENT AFFIDAVIT
U	CONTRACT/PURCHASE ORDER FILE INDEX (SEALED BIDS)
V	CONTRACT/PURCHASE ORDER FILE INDEX (RFP)



W	RESPONSIBILITY DETERMINATION FORM
X	METHOD OF PROCUREMENT - DECISION MATRIX FORM
Y	BID CHECKLIST FORM
Z	BID COST FACTORS FORM
AA	NONCOMPETITIVE PROCUREMENT JUSTIFICATION FORM
BB	DISCLOSURE STATEMENT
CC	SOLE SOURCE COST ANALYSIS FORM
DD	BID SUMMARY FORM
EE	AWARD RECOMMENDATION AND JUSTIFICATION FORM
FF	PRICE/RATE QUOTATION FORM
GG	LEASE/PURCHASE ANALYSIS
HH	COMPLIANCE MATRIX BY DEPARTMENT
APPENDIX	
1	CONTRACT ADMINISTRATION PROCEDURES
2	EMPLOYMENT ELIGIBILITY VERIFICATION AND SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENT (SAVE)
3	FTA TRAINING
4	GENERAL CONDITIONS
5	FTA BONDING REQUIREMENTS
6	REQUIRED PROCUREMENT ELEMENTS AND SUGGESTED BEST PRACTICES

**ATTACHMENT A**

**PIGGYBACKING WORKSHEET**

**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*

<b>WORKSHEET</b>		<b>YES</b>	<b>NO</b>
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 for TVM, Lobbying Buy America, Bus Testing, FMVSS as may be required by Federal regulations?		
4.	Does the contract contain the clauses required by Federal regulations?		
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.		
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.		

## ATTACHMENT B

### **Document Checklist for FTA-funded Piggyback Procurements**

#### 1. **Documents ARCC Obtains from “Piggyback” Agency:**

- a. Copy of the competitively sought RFP with a 5-year contractual limit
- b. Assignability clause
- c. Listing of options
- d. Pricing structure
- e. FTA clauses
- f. Letter from Agency to City assigning the option(s)
- g. Pre-award Buy America information from manufacturer (content, description of final assembly, location of final assembly)
- h. Altoona test report
- i. Signed clauses for Buy America and Lobbying
- j. Certification of compliance with the Federal Motor Vehicle Safety Standards (FMVSS)
- k. TVM certification

#### 2. **Documents created by ARCC:**

##### Pre-Award of ARCC Contract to Bus Manufacturer:

- a. Independent Cost Estimate
- b. Determination that the options in the Agency's RFP were viable and available
- c. Written record of procurement history
- d. Determination that the contract prices originally established are still fair and reasonable before exercising those rights
- e. Written determination that manufacturer has not been suspended or debarred
- f. Pre-award Buy America Audit certification of compliance
- g. Pre-award purchaser's requirements certification

##### Contract Award and Delivery:

- a. Contract between ARCC and the bus manufacturer
- b. Change orders for minor changes and supporting justification
- c. Relevant correspondence
- d. Post Delivery Buy America content from bus manufacturer
- e. Post Delivery Audit certification by ARCC
- f. Post Delivery Purchaser's certification by ARCC
- g. FMVSS from manufacturer
- h. FMVSS certification by ARCC
- i. Inspector reports (if required based upon purchase quantity)

ATTACHMENT C

Checklist for GDOT/GSA

No.	Element	Description	Included	Not Included	NA	Comments
1	<b>Independent Cost Estimate</b>	The grantee made and documented an independent cost estimate before receipt of quotes.				
2	<b>Reasonable Qualification Requirements</b>	The grantee created and issued a solicitation containing reasonable requirements placed on firms.				
3	<b>Written Procurement Selection Procedures</b>	The grantee completed and documented written selection procedures and the solicitation also identifies all requirements that offerors must fulfill and all other factors to be used in evaluating bids.				
4	<b>Award to Responsible Contractors</b>	The grantee documented the determination that it was awarding to a responsible contractor considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.				
5	<b>Sound and Complete Agreement</b>	A sound and complete agreement is included. In addition, the contract includes remedies for breach of contract and provisions covering termination for cause and convenience.				
6	<b>Complete Specifications</b>	A complete, adequate, and realistic specification or purchase description was available and included any specifications and pertinent attachments which define the items sought in order for the bidder to properly respond. These specifications are documented.				
7	<b>Competition</b>	Two or more sources submitted quotes. Successful and unsuccessful bids are documented.				
8	<b>Advertise/Publicized</b>	Proof that the RFQ was publicly advertised is documented.				
9	<b>Adequate Solicitation</b>	Bids were solicited from an adequate number of known suppliers. Proof is documented.				
10	<b>Sufficient Bid Time</b>	Proof that prospective bidders were provided sufficient time to prepare bids prior to the date set for opening the bids is documented.				
11	<b>Rejecting Quotes</b>	A quote (or quotes) was rejected for a sound documented business reason. Reasons are documented. If no bids were rejected, check NA.				



12	<b>Cost or Price Analysis</b>	Either a cost analysis, with associated profit negotiation, or a price analysis was performed and documented in the procurement file with respect to the initial contract award. Also cost analysis was performed when negotiating contract modifications unless price reasonableness was established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.				
No.	Element	Description	Included	Not Included	NA	Comments
13	<b>Written Record of Procurement History</b>	The file contains records detailing the history of this procurement. At a minimum, these records include: (1) the rationale for the method of procurement, (2) selection of contract type, (3) reasons for contractor selection or rejection, and (4) the basis for the contract price.				
14	<b>Out of Scope Changes</b>	The grantee amended this contract outside the scope of the original contract. The amendment was treated as a sole source procurement (complying with the FTA requirements for a justification, cost analysis and profit negotiation). If the contract was not modified or if all modifications were within the scope of the contract, check NA.				
15	<b>Liquidated Damages Provisions</b>	This contract contains liquidated damages provisions and the assessment for damages is specified in the contract at a specific rate per day for each day of overrun in contract time. If this contract does not contain liquidated damages provisions, check NA.				
16	<b>Clauses</b>	This contract contains the appropriate FTA required clauses. The contract clauses located in the Master Agreement should be used to determine the applicability of the clauses to the procurement type. The Best Practices Procurement Manual can be used to determine the applicability of the specific language of a clause that a grantee may use.				

ATTACHMENT D

**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES  
B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS**

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

**TYPE OF PROCUREMENT**

<b>CLAUSE</b>	<b>Professional Services/A&amp;E</b>	<b>Operations/ Management/ Subrecipients</b>	<b>Rolling Stock Purchase</b>	<b>Construction</b>	<b>Materials &amp; Supplies</b>
No federal government obligations to third-parties by use of a disclaimer	All	All	All	All	All
Program fraud and false or fraudulent statements and	All	All	All	All	All
Access to Records	All	All	All	All	All
Federal changes	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Energy Conservation	All	All	All	All	All
Termination Provisions (not required of states)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000 (for steel, iron, manufacture d products)
Provisions for resolution of disputes, breaches, or other litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel	Involving property that may be transported by ocean vessel
Fly America	Involving foreign transport or	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air	Involving foreign transport or travel by air
Davis Bacon Act				>\$2,000 (including ferry vessels)	

**PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER-MATRICES**

**B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (CONTINUED)**

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

**TYPE OF PROCUREMENT**

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000	>\$100,000	>\$100,000 (including ferry vessels)	
Bonding (not required of states)				>\$100,000 (including ferry vessels)	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations funded with Section 5307, 5309, 5311 or 5316 funds			
Charter Service Operations		All			
School Bus Operations		All			
Drug and Alcohol Testing		Transit operations funded with Section 5307, 5309 or 5311 funds			
Patent Rights	Research & development				
Rights in Data and Copyrights requirements	Research & development				
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All

TYPE OF PROCUREMENT					
CLAUSE	Professional Services/A&E	Operations/ Management/ Subrecipients	Rolling Stock Purchase	Construction	Materials & Supplies
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
ADA Access	A&E	All	All	All	
Special Notification Requirements for States	Limited to states	Limited to states	Limited to states	Limited to states	Limited to states



ATTACHMENT E

<b>Independent Cost Estimate</b>	<b>Solicitation #</b> _____
----------------------------------	--------------------------------

Contract Type : \_\_\_\_\_

Date of Estimate: \_\_\_\_\_

Description of Goods/Services: See sheet attached

Method of Obtaining Estimate:

Published Price List / Past Pricing:
Engineering or technical Estimate:
Independent Third Party Estimate:
Other (Specify)

**Cost Estimate Details:**

**Cost of Standard Items**

Product	Delivered	Freight	Notes/Data Source

**Cost of Services, Repairs, or Non-Standard Items**

Materials	Other Direct Costs	Labor	Labor Class	Allocated Overhead	SG&A	Profit	Total

**Signature of Preparer:**



**ATTACHMENT F**

**Price Analysis**

PO/Contract: \_\_\_\_\_

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that proves or strongly suggests 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.

DATE:

PREPARED BY:

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

Comments:





ATTACHMENT H

Cost Analysis Form

COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts)						
SOLICITATION #			SUPPLIES AND/OR SERVICES TO BE FURNISHED			
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE						
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
PURCHASED PARTS						
SUBCONTRACTED ITEMS						
OTHER – RAW MATERIAL STANDARD COMMERCIAL ITEMS						
TOTAL DIRECT MATERIAL						
2. MATERIAL OVERHEAD (RATE % X \$ BASE*)						
3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	VENDOR A (\$)	VENDOR B (\$)	INDEPENDENT ESTIMATE	VARIANCE
TOTAL DIRECT LABOR						



ATTACHMENT H - PAGE 2

4. LABOR OVERHEAD	ESTIMATED HOURS	RATE/HOUR	VENDOR A (\$)	VENDOR B (\$)	INDEPENDENT ESTIMATE	VARIANCE
OH RATE						
X BASE (LABOR TOTAL ABOVE)						
TOTAL LABOR OVERHEAD						
OTHER DIRECT COSTS			VENDOR A (\$)	VENDOR B (\$)	INDEPENDENT ESTIMATE	VARIANCE
SPECIAL TOOLING/EQUIPMENT						
TOTAL SPECIAL TOOLING/EQUIPMENT						
TRAVEL TRANSPORTATION PER DIEM OR SUBSISTENCE						
TOTAL TRAVEL						
DETAIL DESCRIPTION OF COST ELEMENTS (CONTINUED)			VENDOR A (\$)	VENDOR B (\$)	INDEPENDENT ESTIMATE	VARIANCE
INDIVIDUAL CONSULTANTS SERVICES						
TOTAL INDIVIDUAL CONSULTANT SERVICES						
OTHER						
TOTAL OTHER						
SUBTOTAL DIRECT COST AND OVERHEAD						
GENERAL AND ADMINISTRATIVE RATE %						
X \$ BASE (USE 5.E ABOVE)						
ROYALTIES (IF ANY)						
SUBTOTAL ESTIMATED COST						
CONTRACT FACILITIES CAPITAL&COST OF MONEY						
SUBTOTAL ESTIMATED COST						
FEE OR PROFIT						
TOTAL ESTIMATED COST AND FEE OR PROFIT						
DISCOUNTS						
OPTION COSTS (SPECIFY)						
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.

**11. FEE OR PROFIT**

Review the total of all proposed Fees or Profit. Remember that the FTA prohibits cost plus percentage of cost contracting, and caps A&E profits at 10%.

**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**

**ATTACHMENT I**

**SOLICITATION FILE CHECKLIST**

SOLICITATION #		SOLICITATION DESCRIPTION:	
CONTRACT ADMINISTRATOR			
TAB	Included X	DOCUMENTATION	COMMENT
		Purchase Requisition PR No. PO No. Funding Source (check one): Federal      Local Budgetary Sufficiency. Proper Approvals. Requirements Defined; Description, SOW, Specification, Drawing, Warranty Provisions and/or other Data/Documents. Delivery Due Date/Period of Performance Defined. Determination of Contract Type	
		Independent Cost Estimate	
		Sole Source Justification, if applicable.	
		Schedule of Events	
		DBE Requirements / Documentation	
		Risk Management Requirements / Documentation	
		Required Third Party Clauses, if applicable	
		Approval Review	
		Original Solicitation and Original Amendments	
		Supplier Notification list	
		Affidavits of Advertising & Tearsheets	
		Internal Correspondence	
		Correspondence	
		Pre-Bid/Pre-Proposal Conference Summary Attendee List Record of Questions Record of Responses Other Documentation Approved Equals	
		Addendums	
		Bid Tab / Proposal Register	
		Bid Technical Evaluation Documentation	
		Bid Bonds, if applicable	(Construction Only)
		Evaluation Team Approval and No-Conflict Forms	(RFP Only)
		Evaluation Documentation/Scoresheets	(RFP Only)
		Oral Discussions	(RFP Only)
		Final Proposal Revision (FPR)/Price Proposal Evaluation Documentation	(RFP Only)
		Negotiation Memorandum and Documentation	(RFP Only)



**SOLICITATION FILE CHECKLIST**

		Determination of Price Fair and Reasonable / Cost or Price Analysis Determination of Responsiveness Determination of Responsibility <ul style="list-style-type: none"> <li>▪ References</li> <li>▪ Financial/Bank Reference</li> <li>▪ Debarment, verification of EPLS.gov</li> </ul>	
		Successful Bid(s) or Proposal(s), including any FPR(s)	
		DBE Commitment Forms, if applicable	
		Payments to DBE/SBE subcontractors	
		Unsuccessful Bidders/Offerors <ul style="list-style-type: none"> <li>▪ Debriefing Summaries</li> <li>▪ Notices</li> <li>▪ Bid or Proposal Copies</li> <li>▪ Proof of Receipt</li> </ul>	
		Findings and Determinations <ul style="list-style-type: none"> <li>▪ Reason(s) for F&amp;D</li> <li>▪ Supplemental Documentation</li> <li>▪ Review &amp; Approval</li> <li>▪ Protests</li> </ul>	
		Cancellation	
		Procurement Summary	



## ATTACHMENT J

### Rolling Stock Purchases

**Contracting Officers shall assure compliance with FTA regulations at 49 CFR Part 663. These regulations apply to the purchase of rolling stock for carrying passengers in revenue services. Pre-award and post-delivery audits are required to assure compliance with the Authority's bid specifications, Buy America, and Federal Motor Vehicle Safety requirements. The Authority must certify compliance and must maintaining records of the certifications. Records are subject to FTA review.**

### Contract Term Limitation

The City shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change, will require a sole source justification.

### Buy America

As a condition of responsiveness to bidding for procurements of rolling stock, iron, steel, or manufactured products greater than \$100,000 the bidder must submit with the bid or offer, a completed Buy America certificate in accordance with Part 661.6 for steel, iron, and manufactured products, or Part 661.12 for rolling stock (including train control, traction power, and communication equipment). Once submitted the bidder is bound by the certification provided. If the bidder does not submit a certification, the bid shall be considered nonresponsive. If the bidder executes certification that it cannot comply but may be eligible for an exception, then the City shall review the circumstances and determine if it should request a waiver form the FTA. There are specific instances included in the regulations for waiver of Buy America provisions including that it is in the public's best interest, that there are no U.S. products available, or there is a 25 percent price difference between the foreign and domestic products

See FTA's Buy America web page  
[http://www.fta.dot.gov/legal/buy\\_america/14456\\_ENG\\_HTML.htm](http://www.fta.dot.gov/legal/buy_america/14456_ENG_HTML.htm) for additional information on requirements.

**Please see the attached FTA Contract Clauses as a guide to ensure the proper clauses are included in the procurement process. These clauses are required to be included in all FTA contracts and purchase orders.**

**A full text of all Contract Clauses are available from FTA Best Practices Manual.**

**ATTACHMENT K**

**Pre-Award and Post-Delivery Review Checklist**

**Vendor:** \_\_\_\_\_

**Contract No:** \_\_\_\_\_

**Pre-Award Review  
Compliant with FTA Pre-Award Requirements  
(Before signing a contract with a supplier)**

**1. Buy America Certification**

- a) \_\_\_\_\_ **Review and Verify 60 Percent Domestic Content**
- b) \_\_\_\_\_ **Review and Verify Proposed U.S. Final Assembly Location, Operations, and Total Cost**
- c) \_\_\_\_\_ **Complete a Pre-Award Buy America Compliance Certification**

**2. Purchaser's Requirements Certification**

- a) \_\_\_\_\_ **Check Bid Specification Compliance With Solicitation Specifications**
- b) \_\_\_\_\_ **Complete Manufacturer Capability Study**
- c) \_\_\_\_\_ **Complete a Pre-Award Purchaser's Requirements Certification**

**3. FMVSS – Compliant**

- a) \_\_\_\_\_ **Obtain FMVSS Self Certification sticker information from the manufacturer**
- b) \_\_\_\_\_ **Complete a Pre-Award FMVSS Compliance Certification**
- c) \_\_\_\_\_ **File FMVSS Certification for future FTA Reviews**

**Post-Delivery Review  
Compliant with FTA Post-Delivery Requirements  
(Before using the vehicles in transit service)**

**1. Buy America Certification**

- a) \_\_\_\_\_ Review and Verify 60 Percent Domestic Content
- b) \_\_\_\_\_ Review and Verify Actual U.S. Final Assembly Location, Operations, and Total Cost
- c) \_\_\_\_\_ Complete a Post-Delivery Buy America Compliance Certification

**2. Purchaser's Requirements Certification**

- a) \_\_\_\_\_ Complete Resident Inspector's Report; if applicable (10 or more buses/vans)
- b) \_\_\_\_\_ Complete Visual Inspections and Performance Tests
- c) \_\_\_\_\_ Complete a Post-Delivery Purchaser's Requirements Certification
- d) \_\_\_\_\_ Verify the manufacturer's FMVSS sticker is affixed to each bus. Complete an FMVSS Certification and file in procurement file

**ATTACHMENT L**

**Request for Proposal**  
[insert date of solicitation]  
[insert Proposal number]

**Certificate of Compliance with Bus Testing Requirement**

The undersigned certifies that the vehicle offered in this procurement complies and will, when delivered, comply with 49 USC § 5323(c) and FTA's implementing regulation at 49 CFR Part 665 according to the indicated one of the following three alternatives.

Mark one and only one of the three blank spaces with an "X."

- The buses offered herewith have been tested in accordance with 49 CFR Part 665 on \_\_\_\_\_ (date). If multiple buses are being proposed, provide additional bus testing information below or on attached sheet. The vehicles being sold should have the identical configuration and major components as the vehicle in the test report, which must be submitted with this Proposal. If the configuration or components are not identical, then the manufacturer shall provide with its Proposal a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing. If multiple buses are being proposed, testing data on additional buses shall be listed on the bottom of this page.
- \_\_\_\_\_ The manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), and submits with this Proposal the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
- \_\_\_\_\_ The vehicle is a new model and will be tested and the results will be submitted to the Agency prior to acceptance of the first bus.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

**Company name:**

**Name and title of the Proposer's authorized official:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date



**ATTACHMENT M**

**Request for Proposal**  
[insert date of solicitation]  
[insert Proposal number]

**Federal Motor Vehicle Safety Standards**

The Proposer and (if selected) Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**Company name:**  
**Name of signer:**  
**Title:**

---

Authorized signature

Date

**Federal Certifications**  
**Buy America Certification**

This form is to be submitted with an offer exceeding the small purchase threshold for federal assistance programs, currently set at \$100,000.

**Certificate of Compliance**

The Proposer hereby certifies that it will comply with the requirements of 49 USC Section 5323U)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11:

**Name and title:**  
**Company:**

---

Authorized signature Date

**Certificate of Non-Compliance**

The Proposer hereby certifies that it cannot comply with the requirements of 49 USC Section 5323U)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 USC Sections 53230)(2)(8) or U)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

**Name and title:**  
**Company:**

---

Authorized signature Date



**Debarment and Suspension Certification for Prospective Contractor**

Primary covered transactions must be completed by Proposer for contract value over \$25,000.

Choose one alternative:

– The Proposer, [insert name], certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.

**OR**

– The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

– Executed in [insert city and state].

**Name:**

\_\_\_\_\_

Authorized signature Date



**ATTACHMENT P**

**Request for Proposal**  
[insert date of solicitation]  
[insert Proposal number]

**Debarment and Suspension Certification  
(Lower-Tier Covered Transaction)**

This form is to be submitted by each Subcontractor receiving an amount exceeding \$25,000.

The prospective lower-tier participant (Proposer) certifies, by submission of this Proposal, that neither it nor its "principals" as defined at 49 CFR § 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

If the prospective Proposer is unable to certify to the statement above, it shall attach an explanation, and indicate that it has done so by placing an "X" in the following space:

**THE PROPOSER, \_\_\_\_\_, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND EXPLANATION, IF ANY. IN ADDITION, THE PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.**

**Name and title of the Proposer's authorized official:**

Authorized signature

Date

\_\_\_\_\_



**ATTACHMENT Q**

**Request for Proposal**  
[insert date of solicitation] [insert  
Proposal number]

**Non-Collusion Affidavit**

This affidavit is to be filled out and executed by the Proposer; if a corporation makes the bid, then by its properly executed agent. The name of the individual swearing to the affidavit should appear on the line marked "Name of Affiant." The affiant's capacity, when a partner or officer of a corporation, should be inserted on the line marked "Capacity." The representative of the Proposer should sign his or her individual name at the end, not a partnership or corporation name, and swear to this affidavit before a notary public, who must attach his or her seal.

- State of _____ County of _____	
I, _____, being first duly sworn, do hereby state that (Name of Affiant)	
I am _____ of _____ (Capacity) (Name of Firm, Partnership or Corporation)	
whose business is _____	
and who resides at _____	
and that _____ (Give names of all persons, firms, or corporations interested in the bid)	
is/are the only person(s) with me in the profits of the herein contained Contract; that the Contract is made without any connection or interest in the profits thereof with any persons making any bid or Proposal for said Work; that the said Contract is on my part, in all respects, fair and without collusion or fraud, and also that no members of the Board of Trustees, head of any department or bureau, or employee therein, or any employee of the Authority, is directly or indirectly interested therein.	
_____ Signature of Affiant Date	
Sworn to before me this _____ day of _____, 20____.	- Seal
_____ Notary public	
My commission expires _____	



**ATTACHMENT R**



**CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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 subawards at all tiers (including subcontracts, subgrants, 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.

**Statement for Loan Guarantees and Loan Insurance**

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

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement 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 statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Organization



**ATTACHMENT S**



**Request for Proposal** [insert date of solicitation] [insert Proposal number]

**DBE Approval Certification**

I hereby certify that the Proposer has complied with the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

**Name and title of the Proposer's authorized official:**

---

Authorized Signature

Date



**ATTACHMENT T**



**PROMPT PAYMENT AFFIDAVIT**

Contractor will place a check in the appropriate box below that applies to this payment request.

Re: Payment Request No. \_\_\_\_\_

I, \_\_\_\_\_ (Name), the \_\_\_\_\_ (Title - e.g., President, Vice President, etc.) of \_\_\_\_\_ ("Company"), do state the following with regard to payments made under Contract No. \_\_\_\_\_ ("Contract"):

1. \_\_\_ Subcontractors, at the first tier, both DBE and non-DBE, who completed work and were listed for payment on the prior Payment Request No. \_\_\_\_\_, were paid no later than five (5) business days after Company received payment from Augusta, Georgia.
2. \_\_\_ Copies of invoices and cancelled checks for subcontractors at the first tier who were paid under the prior payment request have been delivered or mailed to the DBE Department. In addition, Company has attached to the current Payment Request all lien waivers for prior subcontractor payments and any other documentation required by Augusta, Georgia. (Failure to attach all required documentation to the Payment Request or forward cancelled checks and invoices to The Augusta, Georgia DBE Department may cause the Payment Request to be rejected by Augusta, Georgia.)
3. \_\_\_ All retainage amounts withheld from any subcontractor who satisfactorily completed its portion of the contract work, including punch list items, were paid to the subcontractor(s) no later than fourteen (14) business days after it satisfactorily completed its work, whether or not Augusta, Georgia has paid said retainage amounts to Company. Attach a copy of the cancelled check evidencing payment of each retainage amount.
4. \_\_\_ There was no delay in or postponement of any payment owed to a subcontractor, whether periodic payment or retainage amount, except for good cause and after receipt of prior written approval from the Augusta, Georgia Purchasing Agent.

Attach a copy of the written approval from the Augusta, Georgia Procurement Director.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public





**Contract / Purchase Order File Index  
(For Sealed Bids Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

<b>Section A - Solicitation Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Purchase Request	
2	Specifications & DBE Goals	
3	Requirement Justification	
4	Independent Cost Estimate	
5	Bidder's List	
6	Contractor Information Form	
7	Justification of Procurement Method	
8	Copy of IFB	
9	Proof of publication	
10	IFB Attachments / Modifications	
11	Pre-Bid Minutes & List of Attendees	
12	Correspondence with Bidders	
13	Protests Prior to Bid Opening	
14	Interoffice Correspondence	
15	Review of Responsiveness	

Sealed Bid No. \_\_\_\_\_ Contract Administrator: \_\_\_\_\_

Date: \_\_\_\_\_





**Contract / Purchase Order File Index (For Sealed Bids Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

<b>Section B – Award Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Rationale for Method of Procurement Copy of Each Bid	
2	Late Bid – Bid Errors	
3	Bid Analysis / Tabulation Sheet	
4	Technical Evaluation & Pre-Award Survey	
5	Affirmative Action Evaluation / DBE Plan	
6	Bidder's Responsibility Determination	
7	Price Analysis	
8	Record of Negotiation for Single Bid	
9	Justification of Contract Type	
10	Award Recommendation Memo	
11	Board Resolution	
12	Notice of Award	
13	Notice to Unsuccessful Bidders (Bond, Check Returns)	
14	FTA Approval	
15	Legal Review of Contract Documents	
16	Contract Document	
17	Bond & Certificate of Insurance	
18	Notice to Proceed	
19	Purchase Order	





**Contract / Purchase Order File Index**  
(For Sealed Bids Only)

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

<b>Section C – Contract Administration Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Post Award Conference	
2	Status Reports	
3	Change Notices / Modifications / Change Orders	
4	Site Visit Reports	
5	Progress Meeting Minutes	
6	Quality Assurance Records	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments	
10	Notice of Substantial Acceptance	
11	Notice of Claims	
12	Release of Claims / Bonds	
13	Assignments	
14	Notice of Final Payment	
15	Audit Reports	
16	Liquidated Damages	
17	Close Out Documentation	





**Contract / Purchase Order File Index (For RFP Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with "NA" in the Tab Column.

<b>Section A - Solicitation Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Purchase Request Rationale for Method of Procurement	
2	Specifications / Statement of Work	
3	Justification for Procurement	
4	Cost Estimate	
5	Set Aside Decision / DBE Goal	
6	Contractor Information Form	
7	Justification of Procurement Method	
8	List of Prospective Proposers	
9	Proof of publication	
10	Copy of RFP	
11	Addenda	
12	Pre-Proposal Minutes & List of Attendees	
13	Correspondence with Bidders	
14	Interoffice Correspondence	
15	Review of Responsiveness	

RFP No. \_\_\_\_\_

Contract Administrator: \_\_\_\_\_

Date: \_\_\_\_\_





**Contract / Purchase Order File Index (For RFP Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

<b>Section B – Award Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Copy of Each Proposal	
2	Proposal Tabulation Sheet	
3	Evaluation Team Notification	
4	Evaluation Sheet / Matrix	
5	Pre-Award Survey	
6	Determination of Zone of Consideration	
7	Late Proposers	
8	Invitations for Oral Interviews	
9	Notice of Rejection	
10	Minutes of Meetings	
11	Correspondence with Proposers	
12	Cost or Price Analysis	
13	Justification of Contract Type	
14	Negotiation Memorandum	
15	Copy of Each Best & Final Offer	
16	Award Recommendation Memo	
17	Board Resolution	
18	Legal Review of Contract Documents	
19	Notice of Award	
20	Notice to Unsuccessful Bidders	
21	Procurement Summary	
22	Determination and Findings	
23	Bonds & Certificates of Insurance	
24	Contract Document	
25	Notice to Proceed	
26	Purchase Order	





**Contract / Purchase Order File Index (For RFP Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

<b>Section C – Contract Administration Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Post Award Conference	
2	Quality Assurance Records	
3	Change Notices / Modifications / Change Orders	
4	Periodic Status Reports	
5	Contractor Evaluation Form	
6	Site Visit Reports	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments & Receipts	
10	Advance or Progress Payment Documents	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims / Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	





**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.

	<b>Acceptable</b>		<b>Comment</b>
	Yes	No	
1. Appropriate financial, equipment, facility, and personnel.			_____ _____ _____
2. Ability to meet the delivery schedule.			_____ _____ _____
3. Ability to meet the delivery schedule.			_____ _____ _____
4. Satisfactory record of integrity, not on declined or suspend listing.			_____ _____ _____
5. Receipt of all necessary data form supplier.			_____ _____ _____
6. Debarred and Suspended List been checked (supplier not listed)			_____ _____ _____



**ATTACHMENT X**



**Method of Procurement  
Decision Matrix Form**

To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below. All elements must apply to use that method

<p><b>Micro-purchase</b></p> <p>Amount &lt;\$3000 Multiple sources</p>	<input type="checkbox"/> <input type="checkbox"/>	<p><b>Competitive Procurement</b></p> <p>Amount &gt;\$3000 Multiple sources available Not an Emergency</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<p><b>Small Purchase</b></p> <p>Amount &lt; \$100,000 Complete and Adequate Specification or Description Two or more quotes available</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Sealed Bid (IFBs)&gt;\$100,000</b></p> <p>Complete and Adequate Specifications or Description Two or more responsible Bidders willing to compete Selection can be made on basis of price alone Firm Fixed Price No Discussion with Bidders required after receipt of bids</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<p><b>Sole Source</b></p> <p>Approved by FTA OEM, or custom item OR Only one source available OR inadequate after Solicitation OR Emergency / Public exigency There is a health or safety issue that prohibits delays</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Competitive Proposal (RFPs) &gt; \$100,000</b></p> <p>Complete specifications not feasible Bidder input needed for specification Two or more responsible bidders willing to compete Discussion needed with bidders after proposals Fixed price can be set after discussions OR or a cost reimbursement contract is determined</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<p><b>Selection of Contract Type</b></p> <p>Fixed Price Firm fixed unit prices Cost plus fixed fee Time and material (T&amp;M) Blanket purchase order Indefinite Delivery Indefinite Quantity</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p><b>Time and Material (T&amp;M)</b></p> <p>Fixed price cannot be set for work Complete extent of work unknown whether time, or material use or both</p>	<input type="checkbox"/> <input type="checkbox"/>
<p><b>Best Value</b></p> <p>Price and qualitative consideration Greatest value to Augusta</p>	<input type="checkbox"/>		



ATTACHMENT Y



Bid Checklist Form

	YES	NO
1. Price is firm, fixed and definite	_____	_____
2. Bid is responsive to requirements of the solicitation	_____	_____
3. Exceptions taken to any material term or condition of the solicitation	_____	_____
4. Bid is ambiguous	_____	_____
5. All amendments to solicitation acknowledge	_____	_____
6. Bid signed	_____	_____
7. All material representations, bonds, guarantees and certifications completed.	_____	_____
8. Required information submitted.	_____	_____
9. Bid is not defective.	_____	_____



**ATTACHMENT Z**



**Bid Cost Factors Form**

**Solicitation / Bid No:** \_\_\_\_\_

**Supplier Price Evaluation Factors:**

1. Purchase price: \$ \_\_\_\_\_
2. Payment discount terms: \_\_\_\_\_
3. Transportation costs: \_\_\_\_\_
4. Warranty: \_\_\_\_\_
5. Installation: \_\_\_\_\_
6. Training: \_\_\_\_\_
7. Technical assistance: \_\_\_\_\_

**Total bid:** \_\_\_\_\_

**Evaluation:** \$ \_\_\_\_\_



ATTACHMENT AA



**NONCOMPETITIVE PNONCOMPETITIVE PROCUREMENT JUSTIFICATION FORM  
JUSTIFICATION FOR**

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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Cost Analysis is attached.

\_\_\_\_\_  
Purchasing Agent

\_\_\_\_\_  
Department Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**ATTACHMENT BB**



**Disclosure Statement**

The U.S. Department of Transportation Federal Transit Administration Master Agreement, Section 3a(1) prohibits the recipient's employees, officers, board members or agents from participating in the selection, award, or administration of a third party contract or subagreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award:

- a) an employee, officer, board member or agent;
- b) any member of his or her immediate family;
- c) his or her partner;
- d) an organization that employs or intends to employ any of the above.

It is the responsibility of the officers and employees of Augusta, Georgia upon acquiring interests which conflict or might appear to conflict with the interests of the Federal Transit Administration and/or Augusta, Georgia to bring them forth immediately for resolution.

I, the undersigned Augusta, Georgia employee, acknowledge receipt, understanding and acceptance of the Augusta, Georgia Code and this Disclosure Statement, and certify that (1) I have not solicited or received any kickbacks or gratuities, and (2) I have no financial interest in any supplier with whom Augusta, Georgia does business. If any real or perceived conflict should arise in the discharge of my duties, I will report such conflict immediately to the Director of Human Resources in writing.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*This statement will be renewed on an annual basis*





### Sole Source Cost Analysis Form

Prior to proceeding with sole source procurements, including contract modifications, the requesting department must perform a cost analysis in order to demonstrate the proposed price is fair and reasonable. The cost analysis should examine the elements of cost (labor hours, material, overhead, and profit) for professional consulting and architectural and engineering type contracts.

Please note: It is not sufficient to list the last price paid and the percentage change of the newly quoted price. Actual analysis of the figures should be evident to explain why any increase or decrease in quoted costs is reasonable. All of the following elements must be completed for each proposed sole source procurement.

1. Verification of cost or pricing data and evaluation of cost elements:

---

---

---

---

---

---

2. Comparison of cost proposed with independent or previous cost estimate,, market indices, and other factors:

---

---

---

---

---

---

3. Evaluation of suppliers' costs first hand and assessment for completeness and reasonableness, including evidence and rationale for determination.

---

---

---

---

---

---







**Award Recommendation & Justification Form**

Department: \_\_\_\_\_

Procurement Number: \_\_\_\_\_  
(RFP/BID #)

Subject: \_\_\_\_\_

Report Date: \_\_\_\_\_ Number Bids / RFP'S Mailed: \_\_\_\_\_ Number of Bids / RFP'S Received: \_\_\_\_\_

Recommendation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Justification:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approvals:

\_\_\_\_\_  
PROCURING AGENT

\_\_\_\_\_  
DIRECTOR OF PURCHASING





Price / Rate Quotation Form

Department: \_\_\_\_\_

Subject: \_\_\_\_\_

Report Date: \_\_\_\_\_

Number of Quotes Received: \_\_\_\_\_

Qty.	Qty/Ctn	Item	Vendor	Price	Amount

Recommendation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approvals: \_\_\_\_\_

\_\_\_\_\_  
PROCURING AGENT

\_\_\_\_\_  
DIRECTOR OF PURCHASING



ATTACHMENT GG

## Lease vs. Purchase Analysis

### For Federal Transit Administration (FTA) Funded Procurements

**FTA Background:**

Since equipment leases are considered "third party contracts" within the meaning of FTA Circular 4220.1E, the requirements of that Circular apply to such procurements. FTA Circular 4220.1E requires a lease versus purchase analysis to determine the most economical approach to any given procurement.

Lease vs. purchase alternatives - It is usually less economical to lease equipment than to purchase it. However, there are some instances where this is not true. For example, short-term leases of equipment which is required for a short time or for a unique task may be reasonable and economically sound. It may also be advisable to lease equipment that undergoes rapid technological change such as personal computers and other IT related equipment. In some cases, it is easier to have equipment maintained if it is leased. But long term leases and leases for items that should be purchased and capitalized but cannot be because of budget constraints are not economically prudent. If a decision is made to lease equipment, a lease vs. purchase analysis should be made. The analysis should be appropriate to the size and complexity of the procurement. In determining whether the lease of equipment is feasible, **the following factors must be considered:**

- Estimated length of the period the equipment is required and the amount of time of actual equipment usage;

---

---

---

- Technological obsolescence of the equipment;

---

---

---

- Financial and operating advantages of alternative types and makes of equipment;

---

---

---

- Total rental cost for the estimated period of use;

---

---

---

- Net purchase price, if acquired by purchase;

---

---

---

- Transportation and installation costs;

---

---

---




**Lease vs. Purchase Analysis**

(Continued)

- Maintenance, storage and other service costs;

---



---



---

- Trade-in or salvage value;

---



---



---

- Imputed interest costs;

---



---



---

- Availability of a servicing facility especially for highly complex equipment (can the Agency service the equipment if it is purchased).

---



---



---

Based on this review, it is recommended to:

Purchase

Lease



<b>Requisition Title:</b>	
<b>Submitted by: (Print Name)</b>	
<b>Signature:</b>	
<b>Date:</b>	



Compliance Matrix by Department

Compliance Area	Transit	Finance	Procurement	Planning	Legal Counsel	Administrator's Office	Mayor's Office	Commissioners	Engineering	Fleet Management	Parks and Rec	Risk Management	DBE	EEO	Comments
<b>Key:</b> <b>O = Owner of Requirement</b> <b>A = Dept. Responsible for Compliance Action</b> <b>S = Dept Providing Support</b>															
<b>Legal</b>															
Authorizing Resolution	O S				A	S	A	A							
Delegation of Authority	O S				A										
Annual Certification & Assurances	O A				A S		A								
Lobbying (LLL Form)	O S				A										
<b>Financial Capacity</b>															
Multi-year Op & Capital fin plan	OA	S	S	S					S	S		S			
Budgets	A	O							S	S		S			
Local Share	O	A		S											
<b>Financial Management</b>															
Protocol for cost accounting		O A													
Financial Procedures		O A													
Tracking Grant Drawdowns by ALI	OA	A													
Eligible Costs	S	O A	S												
ECHO process	S	O A	S												
Audits		O A													
Reporting A-133 to FTA	S	OA													
Accounts Payable	S	O A	S												
<b>Technical</b>															
Grant administration procedures	O A	S													
Grant planning	O A		S	S						S		S	S		
Grant reporting Milestones	O A														
Grant reporting Financial	O	A													
Capital leasing	OA		S												
Project Management	O A								A S						
Budget and scope changes	OA								A S						
Grant close-out	O A	S													

**ATTACHMENT HH (Page 2)**

FTA liaison	O	A																			
Cross departmental requirements	O									A											
<b>Oversight of Contractor:</b>																					
Drug and Alcohol	O																		A		
Bus Maintenance	O																		A		
<b>Maintenance</b>																					
Equipment	O																				
Facility	O																		A		
<b>Civil Rights Programs/Plans/Reporting</b>																					
Title VI Program	O	A			S																
DBE Program	O	A		S																A	
EEO Program	O	A																		A	
<b>Satisfactorily Continuing Control</b>																					
Equipment records	O	A	S																		
Inventory and Reconciliation	O	A																			
Ensuring Useful Life Reqts Met	O	S																	A	A	
Disposals	O	A																	A		
Insurance proceeds	O	A																			
FTA interest addressed	O	A	S																		
Fleet management plan	O	A	S		S														A		
<b>Procurement</b>																					
Policy	S		S		S	OA															
Procedures																					
Scope of Work	O	A		A																	
Method Used to Procure	A		OA																		
Procurement Process: Solicitation to Contract Award	S		OA																		
DBE Reqts	A		A																	OA	
Buy America Clause & Cert	O	A		S																A	
Rolling Stock: Pre Award Audit; Purchasers Certs, VMSS	O	A		S																	
Rolling Stock: Post Delivery Audit; Purchasers Certs, VMSS	O	A		S															A		
Debarment and Suspension (SAMS)	S		OA																		
Lobbying Cert	S		OA																		
FTA Clauses	A		O																		
Contract Administration	A		O		S	S													A		S



Attachment HH (page 3)

ADA														
Fixed route services	O	A			S									
Paratransit services	O	A			S									
Facility Design/Renovation	O	A			S					A				
<b>Drug and Alcohol Program</b>	O	S			S						A			

**Contract Administration Procedures**

Contract administration is the coordination of all actions that take place to obtain compliance with all contract requirements, which may include delivery, installation, acceptance, payment and closing of the contract.

Contract administration includes monitoring progress of contractors regarding requirements such as delivery/performance schedules in accordance with terms of the contract and evaluating performance. It also includes determining whether the contractor is complying with applicable contract clauses. Further, it includes administering the progress payments provisions.

Before the procurement is released, a Project Manager from the user department is assigned the responsibility to monitor the contract through performance, completion and close-out. Generally, the scope of work/specifications defines the specific task, schedules and other performance requirements of the contract. As a consequence, the contract administration procedures will vary depending on the specific project. The Project Manager may provide scope of work/specification interpretation and technical direction to the contract and respond to contractor correspondence on technical matters. A copy of all correspondence shall be provided to Procurement. The Project Manager shall review the progress of the work on a periodic basis and initiate contract review as required.

The Project Manager shall review the contractor's documentation and invoices in relation to the schedule, cost expended to date and budgeting information. The Project Manager shall also review invoices for accuracy and content and recommend, if appropriate, the approval for payment in accordance with contract terms and conditions.

If, during the course of the contract, it becomes apparent that a change in the scope of work/specifications is required, the Project Manager shall initiate a request for a change order by providing the recommended change and other required documentation to the Procurement Manager or designee. The change in the scope of work/specifications, change in schedule, and cost provided by the contractor is needed before the change order is processed. Any changes must not be a major deviation from the original purpose of the work. **Below is and excerpt from the FTA Grant Program Compliance Matrix for Contract Administration.- (ATTACHMENT HH)**

**Augusta has identified the following as Compliance Areas by Departments.**

Compliance Area	Transit	Procurement	Legal Counsel	Engineering	DBE
Finance Department is responsible for all fiscal requirements for FTA Grants					
<b>Key:</b> <b>O = Owner of Requirement</b> <b>A = Dept. Responsible for Compliance Action</b> <b>S = Dept. Providing Support</b>					
<b>Procurement</b>					
Contract Administration	A	O	S	A	S

The Procurement Department AS OWNER will ensure that the following information as required by FTA C 4220.1F is in each FTA Third Party Contract

- Transit is Responsible for Compliance Action
- Engineering is Responsible for Compliance Action (Optional)
- DBE is a supporting department for DBE



**U.S. Department of Transportation  
Federal Transit Administration**

**Required Procurement Elements and Suggested Best Practices**

**1) Written Standards of Conduct**

(1) “The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.”

- a. “...no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.”
- b. “The recipient’s officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.”
- c. “To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient’s officers, employees, agents, board members, or by contractors or subrecipients or their agents.” [FTA C 4220.1F (MS Word), III, 1.a, b, c.]

**2) Contract Administration System**

“The Common Grant Rules require 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.” [FTA C 4220.1F (MS Word), III, 3.]

**3) Written Protest Procedures**

(1) “FTA expects each recipient to have appropriate written protest procedures, as part of its requirement to maintain or acquire adequate technical capacity to implement the project.

- a. Recipients are required “to notify FTA when they receive a third party contract protest to which this circular applies, and to keep FTA informed about the status of the protest.
- b. The protester must exhaust its administrative remedies by pursuing the recipient’s protest procedures to completion before appealing the recipient’s decision to FTA.
- c. The protestor must be an “interested party,” that is, “a party that is an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the third party contract at issue.
- d. FTA will limit its review of third party contract protests as follows:
  1. The recipient does not have protest procedures, or
  2. Has not complied with its protest procedures, or
  3. Has not reviewed the protest when presented an opportunity to do so.

4. When a Federal law or regulation is involved...FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program.
- e. The protestor must deliver its appeal to the FTA Regional Administrator...within five (5) working days of the date when the protestor has received actual or constructive notice of the recipient's final decision," or ..."when the protestor has identified other grounds for appeal to FTA," such as "the recipient's failure to have or failure to comply with its protest procedures or failure to review the protest." [FTA C 4220.1F (MS Word), VII, 1.a. b.]

#### 4) Prequalification System

"A recipient may prequalify people, firms, or products for participation in its procurements provided that:

- a. ...lists used in acquiring property and services are current.
- b. ...lists include enough qualified sources to ensure maximum full and open competition.
- c. The recipient permits potential bidders or proposers to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation." [FTA C 4220.1F (MS Word), VI, 1.c]

[Note: Grantees are not required, or encouraged, to have a prequalification system. Prequalification systems are difficult and costly to maintain in a way that does not inhibit competition. The intent of this element is to ensure that, if a grantee maintains a prequalification list for one or more products or services, or a qualified manufacturers list, such lists are current and provide full and open competition.]

#### 5) Procedures for Ensuring Most Efficient and Economic Purchase

"Proposed procurements should be reviewed to avoid the purchase of property and services the recipient does not need (including duplicative items and unnecessary options)... Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase...To obtain the best value, lease versus purchase alternatives for acquiring property should be reviewed and, if necessary, an analysis should be obtained to determine the more economical alternative." FTA requires the recipient to make a written determination of the cost of leasing the asset compared with the cost of purchasing or constructing it." [FTA C 4220.1F (MS Word), IV, 1.b. c. e.]

#### 6) Procurement Policies and Procedures

"Each recipient and subrecipient may use its own procurement procedures, provided that its procurements conform to applicable Federal law and regulations." [FTA C 4220.1F (MS Word), III, 3.a.] "...the guidance within this circular applies to each Federal Transit Administration (FTA) recipient of Federal assistance...." [FTA C 4220.1F (MS Word), II, 1.]

## II.2. INDIVIDUAL PROCUREMENT ELEMENTS

### 7) Independent Cost Estimate

“The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action ...as a starting point, the recipient must make independent estimates before receiving bids or proposals” [FTA C 4220.1F (MS Word), VI, 6.; BPPM § 2.3.2]

### 8) A&E Geographic Preference

“Geographic location may be a selection criterion [in procurements for architectural and engineering (A&E) services] provided an appropriate number of qualified firms are eligible to compete for the contract, given the nature and size of the project.” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (g); BPPM § 6.5]

### 9) Unreasonable Qualification Requirements

Example of situation restrictive of competition: “Unreasonable requirements placed on bidders or offerors in order for them to qualify to do business” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (a); BPPM § 2.4.2.1]

### 10) Unnecessary Experience and Excessive Bonding

Example of situation restrictive of competition: “Unnecessary experience” and “excessive bonding requirements... FTA does not require any bonding for rolling stock, services, maintenance operations, or any contracts other than construction...” [FTA C 4220.1F (MS Word), IV, 2.b.h. (1); BPPM § 2.4.2.1.]

### 11) Organizational Conflict of Interest

Example of situation restrictive of competition: “Organizational Conflict of Interest. An organizational conflict of interest occurs when any of the following circumstances arise:

- a. **Lack of Impartiality.** When the contractor is unable, or potentially unable, to render impartial assistance or advice to the recipient due to other activities, relationships, contracts, or other circumstances.
- b. **Impaired Objectivity.** When the contractor’s objectivity in performing the contract work is or might be otherwise be impaired due to other activities, relationships, contracts, or other circumstances.
- c. **Unfair Competitive Advantage.** The contractor has an unfair competitive advantage.” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (h); BPPM § 2.4.2.2]

### 12) Arbitrary Action

Example of situation restrictive of competition: “Taking any arbitrary action in the procurement process” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (j); BPPM § 2.4.2.1]

### 13) Brand Name Restrictions

Example of situation restrictive of competition: “Specifying only a ‘brand name’ product instead of allowing an ‘or equal’ product to be offered or failing to specify the brand name product’s salient characteristics” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (f); BPPM § 2.4.2.1 and 2.4.2.2.1]

- a. “Detailed product specifications should be avoided if at all possible in favor of performance specifications.” [FTA C 4220.1F (MS Word), VI, 2.a. (1)]
- b. “When it is impractical or uneconomical to make a clear and accurate description of the technical requirements of the property... a ‘brand name or equal’ description may be used as a means to define the performance or other salient characteristics of a specific type of property. The recipient, however, must state the salient

characteristics of the named brand that offerors must provide.” [FTA C 4220.1F (MS Word), VI, 2.a. (3); BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]

#### 14) Geographic Preferences

Example of situation restrictive of competition: “Specifying statutorily or administratively imposed in-State or local geographical preferences or evaluating bids and proposals in light of such in-State or local geographical preferences. Specifically, an FTA recipient is prohibited ...from limiting their bus purchases to in-State dealers.” [FTA C 4220.1F (MS Word), VI, 2. a. (4) (g)]

#### 15) Contract Term Limitation

- a. “To comply with 49 U.S.C 5325 (e)(1), a multi - year third party contract to purchase additional rolling stock and replacement parts may not have options that extend more than five years after the date of the original contract.”
- b. “FTA interprets this five-year period as covering the recipient’s rolling stock and replacement needs from the first day when the contract becomes effective to those at the end of the fifth year. This means that the contract may not encompass more rolling stock and replacement parts than the recipient needs within five years. The five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing no more than the recipient’s rolling stock or replacement parts needs for five years based on the effective date of the contract.” [FTA C 4220.1F (MS Word), IV, 2.e.(10)]

#### 16) Written Procurement Selection Procedures

- a. “The Common Grant Rule...requires the recipient to have written procurement procedures.” [FTA C 4220.1F (MS Word), III, 3. a.; BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]
- b. “The Common Grant Rules require that each solicitation provide for the following...Identify all factors to be used in evaluating bids or proposals.” [FTA C 4220.1F (MS Word), VI, 2.e.; BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]

#### 17) Solicitation Prequalification Criteria

A recipient may prequalify people, firms, or products for participation in its procurements provided that:

1. “**Lists.** The recipient ensures that all its prequalification lists used in acquiring property and services are current. [FTA C 4220.1F (MS Word), VI, 1.c.(1)]
2. “**Sources.** The recipient ensures that all its prequalification lists include enough qualified sources to ensure maximum full and open competition.” [FTA C 4220.1F (MS Word), VI, 1.c.(2)]
3. “**Qualification Periods.** The recipient permits potential bidders or proposers to qualify during the solicitation period (from the issuance of the solicitation to its closing date).” [FTA C 4220.1F (MS Word), VI, 1.c.(3)]

#### 18) Award to Responsible Contractors

“A recipient may award a contract ...only to a ‘responsible’ contractor capable of successfully performing under the terms and conditions of the contract. To determine responsibility, the recipient must consider the following criteria before awarding the contract:

1. **Integrity.** The contractor's integrity;
2. **Public Policy.** The contractor's compliance with public policy;
3. **Past Performance.** The contractor's past performance;
4. **Financial and Technical Resources.** The contractor's financial and technical resources, and;
5. **Debarment/Suspension.** Contractor's status with respect to DOT regulations, 'Governmentwide Debarment and Suspension (Nonprocurement),' 49 CFR Part 29." [FTA C 4220.1F (MS Word), VI, 8.b.]

#### **19) Sound and Complete Agreement**

- a. "The Common Grant Rules require that all third party contracts include provisions adequate to form a sound and complete agreement." [FTA C 4220.1F (MS Word), III, 3.b.]
- b. "Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor." [FTA C 4220.1F (MS Word), IV, 2.b. (6) 2]
- c. "For contracts exceeding \$10,000, there must be termination for cause and termination for convenience provisions." [FTA C 4220.1F (MS Word), IV, 2.b. (6) 4]

#### **20) No Splitting [Micro-purchase]**

"...there should be ... no splitting of procurements to avoid competition." [FTA C 4220.1F (MS Word), VI, 3.a.; BPPM § 4.1]

#### **21) Fair and Reasonable Price Determination [Micro-purchase]**

"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 this determination." [FTA C 4220.1F (MS Word), VI, 3.a. (2) (c); BPPM § 4.1]

#### **22) Micro-Purchase Davis Bacon**

"Davis - Bacon prevailing wage and hour restrictions apply to construction contracts exceeding \$2,000." [FTA C 4220.1F (MS Word), VI, 3.a.; BPPM § 4.1]

#### **23) Price Quotations [Small Purchase]**

"Price or rate quotations shall be obtained from an adequate number of qualified sources" [FTA C 4220.1F (MS Word), VI, 3.b.; BPPM § 4.2]

#### **24) Clear, Accurate, and Complete Specification**

- a. "Each solicitation must provide a clear and accurate description of the technical requirements for the property or services to be procured." [FTA C 4220.1F (MS Word), VI, 2.a.; BPPM § 3]
- b. "In competitive procurements, the description may not contain features that unduly restrict competition." [FTA C 4220.1F (MS Word), III, 3.a..(1) (b)]
- c. "The Common Grant Rule ... advises the recipient to describe technical requirements in terms of 'functions to be performed or performance required, including the range

- d. of acceptable characteristics or minimum acceptable standards.” [FTA C 4220.1F (MS Word), III, 3.a.(1) (d)]
- e. “In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (a)]
- f. “If this procurement method is used . . . the invitation for bids will include any specifications and pertinent attachments...in order for the bidder to properly respond.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (c)]

#### **25) Adequate Competition - Two or More Competitors**

- a. “In order for sealed bidding to be feasible, the following conditions should be present: . . . Two or more responsible bidders are willing and able to compete effectively for the business.” [FTA C 4220.1F (MS Word), VI, 3.c. (b)]
- b. “Competitive proposals is a procurement method normally conducted with more than one source submitting an offer or proposal.” [FTA C 4220.1F (MS Word), VI, 3.d.(2)(c)]  
“. . .the procurement lends itself to a firm fixed price contract.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (c)]

#### **26) Firm Fixed Price [Sealed Bid]**

“. . .the procurement lends itself to a firm fixed price contract.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (c)]

#### **27) Selection on Price [Sealed Bid]**

“. . .the selection of the successful bidder can be made on the basis of price and those price-related factors included in the solicitation.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (d)]

#### **28) Discussions Unnecessary [Sealed Bid]**

“No discussion with bidders is needed” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (e)]

#### **29) Advertised/Publicized [Sealed Bid] [RFP]**

- a. “...sealed bidding (is) a procurement method in which bids are publicly solicited.” [FTA C 4220.1F (MS Word), VI, 3.c.]
- b. “The invitation for bids will be publicly advertised.” [FTA C 4220.1F, VI, 3.c. (2) (a)]
- c. “Procurement Procedures. The following procedures apply to procurements by competitive proposals: (a) Publicity. The request for proposals is publicly advertised.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (a)]

#### **30) Adequate Number of Sources Solicited [Sealed Bid] [RFP]**

- 1. “Bids shall be solicited from an adequate number of known suppliers....” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (b)]
- 2. “Procurement Procedures. The following procedures apply to procurements by competitive proposals: (c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (c)]

**31) Sufficient Bid Time [Sealed Bid]**

“Bids shall be solicited from an adequate number of known suppliers, providing time to prepare bids prior to the date set for opening the bids.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (d)]

**32) Bid Opening [Sealed Bid]**

“All bids will be publicly opened at the time and place prescribed in the invitation for bids” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (e)]

**33) Responsiveness [Sealed Bid]**

“A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.”

- a. “When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;”
- b. “Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (f)]

**34) Lowest Price [Sealed Bid]**

“A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (f)]

**35) Rejecting Bids [Sealed Bid]**

“Any or all bids may be rejected if there is a sound, documented business reason” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (g)]

**36) Evaluation [RFP]**

“If this procurement method is used the following requirements apply: ...

- a. All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed... [FTA C 4220.1F (MS Word), VI, 3.d. (2) (b)]
- b. The recipient will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (d)]

**37) Price and Other Factors [RFP]**

“If this procurement method is used the following requirements apply: . . . Award will be made to the responsible firm whose proposal is most advantageous to the recipient’s program with price and other factors considered.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (e)]

**38) Sole Source if Other Award is Infeasible**

“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:” [FTA C 4220.1F (MS Word), VI, 3.i.(1)]

- a. “When the supplies or services are available from only one responsible source, and no other type of supplies or services will satisfy the recipient’s requirements; or” [FTA C 4220.1F (MS Word), VI, 3.i.(b)]

- b. “When the recipient’s need for the supplies or services is of such unusual and compelling urgency that the recipient would be seriously injured unless the recipient is permitted to limit the number of sources from which it solicits bids or proposals, or when the public exigency or emergency for the requirement will not permit a delay resulting from a competitive solicitation;” or [FTA C 4220.1F (MS Word), VI, 3.i.2(c)]
- c. “FTA authorizes noncompetitive negotiations;” or [FTA C 4220.1F (MS Word), VI, 3.i.2(e)]
- d. “After solicitation of a number of sources, competition is determined inadequate” [FTA C 4220.1F (MS Word), VI, 3.i.2]

### **39) Cost Analysis Required [Sole Source]**

“A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders....” [FTA C 4220.1F (MS Word), VI, 6.a.]

### **40) Evaluation of Options**

“Options may be included in contracts to assure the future availability of property or services. An option is a unilateral right in a contract by which, for a specified time, a recipient may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.” [FTA C 4220.1F (MS Word), IV, 1.d.]

- a. “In awarding the basic contract ... the recipient shall evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the recipient is likely to exercise the options.” [FTA C 4220.1F (MS Word), VI, 7.b.]
- b. “When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.” [FTA C 4220.1F (MS Word), V, 7.a. (1) (c) 1]

### **41) Cost or Price Analysis**

- a. Cost analysis
  - i. “The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation . . . .” [FTA C 4220.1F (MS Word), VI, 6.]
  - ii. “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, etc.)” [FTA C 4220.1F (MS Word), VI, 6.a.]
  - iii. “A cost analysis will be necessary when adequate price competition is lacking . . . 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 . . .” [FTA C 4220.1F (MS Word), VI, 6.a.]

- iv. “A cost analysis will be necessary when adequate price competition is lacking . . . unless price reasonableness can be established on the basis of . . . prices set by law or regulation”. [FTA C 4220.1F (MS Word), VI, 6.a.]
- v. “A cost analysis will be necessary . . . for 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 . . .” [FTA C 4220.1F (MS Word), VI, 6.a.]
- vi. “A cost analysis will be necessary . . . for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of . . . prices set by law or regulation.” [FTA C 4220.1F (MS Word), VI, 6.a.]
- b. “A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.” [FTA C 4220.1F (MS Word), VI, 6.b.]
- c. Profit
  - i. “The recipient will negotiate profit as a separate element of the price for each contract in which there is no price competition . . . .” [FTA C 4220.1F (MS Word), VI, 6.a.(3)]
  - ii. “The recipient will negotiate profit as a separate element of the price for each contract ...in all cases where cost analysis is performed.” [FTA C 4220.1F (MS Word), VI, 6.a.(3)]
  - iii. “To establish a fair and reasonable profit, consideration will be given to:
    - a. the complexity of the work to be performed,
    - b. the risk being borne by the contractor,
    - c. the contractor’s investment,
    - d. the amount of subcontracting,
    - e. the quality of its record of past performance, and
    - f. industry profit rates in the surrounding geographical area for similar work.” [FTA C 4220.1F (MS Word), VI, 6.a.(3)]

#### 42) Written Record of Procurement History

“The Common Grant Rules require the recipient to maintain...written records detailing the history of each procurement, as follows:

- a. **Procurement Method.** ...the rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive;
- b. **Contract Type.** ...state the reasons for selecting the contract type (fixed price, cost reimbursement, etc.);
- c. **Contractor Selection.** ...state the reasons for contractor selection or rejection...include a written responsibility determination for the successful contractor.
- d. **Cost or Price.** Each recipient must evaluate and state its justification for the contract cost or price.” [FTA C 4220.1F (MS Word), III, 3. d. (1)]

### 43) Exercise of Options

“Options may be included in contracts to assure the future availability of property or services. An option is a unilateral right in a contract by which, for a specified time, a recipient may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.” [FTA C 4220.1F (MS Word), IV, 1. d.]

- a. **“Consistency with the Contract.** A recipient must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.” [FTA C 4220.1F (MS Word), V, 7. a. (1) (a)]
- b. **“Price.** An option may not be exercised unless the recipient has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.” [FTA C 4220.1F (MS Word), V, 7. a. (1) (b)]
- c. **“Negotiating a Lower Option Price.** Exercising an option after a lower price has been negotiated constitutes a sole source procurement.” [FTA C 4220.1F (MS Word), V, 7. a. (1) (c) 2]

### 44) Out of Scope Changes

“A contract change that is not within the scope of the original contract is considered a sole source procurement...” [FTA C 4220.1F (MS Word), VI, 3.i.(1)(b)]

### 45) Advance Payments

“Advance payments are payments made to a contractor before the contractor incurs costs in the performance of the contract. The following principles and restrictions apply:

- a. **Use of FTA Funds Prohibited.** FTA does not authorize the use of Federal assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable....A recipient that seeks to use FTA or local share funds to support advance payments should contact its Regional Office to obtain FTA concurrence.” [FTA C 4220.1F (MS Word), IV, 2.b.(5)(b).1, 2]
- b. **Customary Advance Payments.** FTA concurrence is required only when advance payment or payments customarily required in the market place exceed \$100,000.” [The circular notes that advance payments falling into this category would include such things as utility services, and subscriptions to newspapers and magazines.] [FTA C 4220.1F (MS Word), IV, 2.b.(5)(b)2 b]

### 46) Progress Payments

“Progress payments are payments for costs incurred by the contractor in the performance of the contract before the contract work has been completed. FTA assistance may be used to support progress payments provided:

- a. the recipient obtains adequate security for those payments, and
- b. has sufficient documentation to substantiate the work performed for which payment is requested.
- c. Progress payments for construction contracts may be made on a percentage of completion basis (as described in the Common Grant Rules). This payment method may not be used in non-construction contracts.” [FTA C 4220.1F (MS Word), IV, 2.b.(5)(c)]

#### 47) Time and Materials Contracts

“The Common Grant Rule ...permits the use of time and material type contracts only:

1. **Restricted Use.** After a determination that no other type of contract is suitable; and
2. **Firm Ceiling Price.** If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.” [FTA C 4220.1F (MS Word), VI, 2.c.(2)(b)]

#### 48) Cost Plus Percentage of Cost

“The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and percentage of construction cost methods of contracting.” [FTA C 4220.1F (MS Word), VI, 2.c.(2)(a)]

#### 49) Liquidated Damages Provisions

“**Delay.** FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion and the extent or amount of such damages would be difficult or impossible to determine. The rate and measurement period must be specified in the third party contract and may not be excessive. The assessment for damages is usually established at a specific rate per day for each day beyond the contract’s delivery date or performance period, but a measurement period other than a day may be established if appropriate. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.” [FTA C 4220.1F (MS Word), IV, 2.b.(6)(b)1]

#### 50) Piggybacking

“**Assignment of Rights.** Although FTA does not encourage the practice, a recipient may assign its contractual rights to purchase property and services to other recipients if the original contract contains an appropriate assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded, or other appropriate assignment provisions. Some refer to this process as “piggybacking.”

- a. “If the supplies or services were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract.”
- b. “An FTA recipient that obtains these contractual rights through assignment may exercise them after first determining the contract price remains fair and reasonable, and all Federal requirements have been addressed in the contract’s clauses. The recipient is not required to perform a second price analysis if a price analysis was originally performed. However, the recipient must determine the contract price or prices originally established are still fair and reasonable.”
- c. “The recipient is responsible for Buy America compliance with the transaction and assuring that they execute all of the required pre-award and post-delivery Buy America audit certifications.” [FTA C 4220.1F (MS Word), V, 7. a. (2); BPPM Appendix B.16]

### 51) Qualifications Exclude Price [A&E]

**“When Required.** Qualifications-based proposal procedures are required for projects related to or leading to a construction project. These procedures must be used not only when contracting for architectural and engineering services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. Grantees shall use qualifications-based competitive proposal procedures [i.e. Brooks Act Procedures when contracting for A&E services as defined in 40 U.S.C. Sections 1101 - 1104 and 49 U.S.C. Section 5325(b)(1)]. When this procurement method is used, the following requirements apply: [FTA C 4220.1F (MS Word), VI, 3.f.(3)]

- a. **Qualifications.**– An offeror’s qualifications must be evaluated.
- b. **Price.** Price is excluded as an evaluation factor. .” [FTA C 4220.1F (MS Word), VI, 3.f.(3)(b)]
- c. **“Design-Build.** An FTA recipient must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act...when the preponderance of the work to be performed is considered to be for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related A&E services. (A&E) services...qualifications-based competitive proposal procedures may not be used to procure design-build services when the preponderance of the work to be performed are services other than those listed in the previous sentence, unless required by State law.” [FTA C 4220.1F (MS Word), VI, 3.h.]

### 52) Serial Price Negotiations [A&E]

When this procurement method is used, the following requirements apply:

- a. **Most Qualified.** Negotiations are conducted with only the most qualified offeror; and
- b. **Next Most Qualified.** Failing agreement on price, negotiations with the next most qualified offeror and, if necessary, negotiations with successive offerors in descending order must be conducted until a contract award can be made to the offeror whose price the recipient believes is fair and reasonable.” [FTA C 4220.1F (MS Word), VI, 3.f.(3)]

### 53) Bid Security [Construction Over \$100,000]

**“Bonding.** The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

1. **Bid Guarantee.** Both FTA and the Common Grant Rules require a bid guarantee from each bidder equivalent 5 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 will honor its bid upon acceptance of his bid [FTA C 4220.1F (MS Word), IV, 2.h.(1)(a)]

#### 54) Performance Security [Construction Over \$100,000]

“**Bonding.** The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

- a. **Performance Bond.** Both FTA and the Common Grant Rules require 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” [FTA C 4220.1F (MS Word), IV, 2.h.(1)(b)]

#### 55) Payment Security [Construction Over \$100,000]

“**Bonding.** The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

- a. **Payment Bond.** A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all people supplying labor and material in the execution of the work provided for in the contract. FTA has determined the following payment bond amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
  1. **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million;
  2. **More Than \$1 Million but Less Than \$5 Million.** Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  3. **More Than \$5 Million.** Two and a half million dollars if the contract price is more than \$5 million.” [FTA C 4220.1F (MS Word), IV, 2.h.(1)(c)]

A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project, may submit its policy and rationale to its FTA Regional Office for approval.” [FTA C 4220.1F (MS Word), IV, 2.h.(1)(e)]

#### 56) Clauses

“**FEDERAL REQUIREMENTS THAT MAY AFFECT A RECIPIENT’S ACQUISITIONS.** Before FTA assistance may be used to support an acquisition of property or services, all applicable Federal requirements, whether or not addressed in the Common Grant Rules, must be fulfilled.” [FTA C 4220.1F (MS Word), IV, 2.]

[FTA Circular 4220.1F, Appendix D, contains a matrix of Federally required clauses and contractor certifications for various dollar values and types of procurements, such as construction, A&E, rolling stock, materials, etc. Instructions for these clauses and suggested clause language may be found in the FTA “Best Practices Procurement Manual,” Appendix A.1]

## PROCUREMENT

Procurement has the overall responsibility for administering contracts. These responsibilities consist of the following:

- a) Acts as a focal point for correspondence and provides direction to the contractor regarding contractual matters.
- b) Coordinates proposed changes with contractors, obtains cost information, assesses cost and schedule impact, and obtains necessary approval to process contract changes.
- c) Negotiates change order pricing if necessary, completes required cost analysis for change orders, negotiates and prepares all change orders with technical assistance from the Project Manager, with supporting backup, reflecting these changes.
- d) Monitors requests for payment to ensure that payments are processed in a timely manner.
- e) Assures contractor maintains required insurance coverage during the term of the contract.
- f) Reviews proposed changes in subcontracts submitted by the contractor to ensure compliance with the contract requirements. Obtains the technical review from the Project Manager to assure proper scope, level of effort and subcontract price. Prepares and transmits appropriate written responses to the contractor either granting approval or requiring appropriate changes.
- g) Prepares contractual memoranda with cooperation from the Project Manager for presentation to APT staff and Board of Commissioners.
- h) Maintains master contract files.
- i) Attends, as required, project progress meetings between contractor and APT staff.
- j) Performs contract close-out in accordance with established procedures.

### PROJECT MANAGER

- a) Assures that contractor performs in accordance with the scope of work/specification contained in APT's contract.
- b) Assures that the contractor is making timely progress in meeting established performance schedules. (Informs Procurement in a timely manner, by means of a written report, on the status of each contract).
- c) Establishes and maintains a process that routinely and periodically monitors the quality of a contractor's performance. Informs senior management and Procurement of any significant deviations, as they occur, and corrective action proposed.
- d) Reviews invoices for compliance with contract including for accuracy and allowable costs. Notifies contractor if invoice is incorrect, approves for payment if correct, processes blanket release for payment and forwards to Accounts Payable.
- e) Reviews all contract amendments, change orders, etc. and concurs in such actions prior to execution by Procurement.

### DBE LIAISON OFFICER

The Chief Executive Officer concerning DBE Program matters for Augusta, Georgia shall be the Mayor of Augusta, Georgia. Augusta shall have a DBE Liaison Officer who shall have direct, independent access to the Mayor concerning DBE Program matters. The DBE Liaison Officer shall have the following duties and responsibilities:

- (a) Gathering and reporting statistical data and other information as required by DOT, FTA, FAA and other contracts covered by this program.
- (b) Reviewing third party contracts and purchase requisitions for compliance with this program.

- (c) Working with all departments to set overall annual goals or as required by federal law.
- (d) Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
- (e) Identifying contracts and procurements so that DBE goals are included in solicitations covered by this DBE Program.
- (f) Analyzing Augusta, Georgia's progress toward attainment and identifying ways to improve progress.
- (g) Participating in pre-bid meetings.
- (h) Advising the Commission on DBE matters and achievement.
- (i) Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- (j) Planning and participating in DBE training seminars.
- (k) Certifying DBEs according to the criteria set by DOT and FTA and acting as liaison to the Uniform Certification Process in Georgia.
- (l) Providing outreach to DBEs and community organizations to advise them of opportunities.
- (m) Maintaining the DBE bidder's list for DOT, FTA and other contracts covered by this program as provided in § 1-10-117.
- (n) Ensuring that all aspects of this DBE Program are complied with by participants and using agencies.

**See ATTACHMENT HH for the FTA Grant Program Compliance Matrix.** This matrix identifies by Department its responsibility for each area of compliance.

## APPENDIX 2

### Employment Eligibility Verification and Systematic Alien Verification for Entitlements (SAVE):

#### Employment Eligibility Verification (E-Verify)

All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their *E-Verify number* and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to its contract with Augusta, Georgia the contractor will secure from such subcontractor(s) each subcontractor's *E-Verify number* as evidence of verification of compliance with O.C.G.A. § 13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to Augusta, Georgia at the time the subcontractor(s) is retained to perform such physical services.

#### Systematic Alien Verification for Entitlements (SAVE) Program

O.C.G.A. § 50-36-1, requires Georgia's cities to comply with the federal **Systematic Alien Verification for Entitlements (SAVE) Program**. SAVE is a federal program used to verify that applicants for certain "public benefits" are legally present in the United States. Contracts with Augusta, Georgia are considered "public benefits." Therefore, the successful bidder will be required to provide the Affidavit Verifying Status for Augusta, Georgia Benefit Application with their submittal.

## APPENDIX 3



### Objective:

To schedule future FTA training for Procurement Staff to address deficiencies discovered in the Transit Review and to foster the use of industry best practices to be able to assess compliance with Federal procurement requirements.

### Solution:

1. Transit Department is to notify Procurement of all FTA training sessions;
2. Procurement will be responsible for expenditures;
3. Positions identified to attend FTA Workshop(s) are
  - a. **Compliance Officer**
  - b. **Quality Assurance Analyst** and/or
  - c. Procurement Director and/or
  - d. Bid and Management Specialist and/or
  - e. Administrative Assistant

Immediately after a FTA workshop is attended Procurement will adopt a "Train the Trainer" method for all personnel involved in the FTA process. Training will be conducted in the Procurement Training room no later than three (3) weeks after attending FTA workshop(s). The training will be conducted by the Compliance Officer and the Quality Assurance Analyst. It will be mandatory for the following personnel to attend any scheduled FTA training as deemed necessary.

- a. Bid and Contract Team
- b. Bid and Management Specialist
- c. Acquisition Team Leader
- d. Procurement Director
- e. Administrative Assistant

Attached is a copy of the training sessions that was attended prior to and after the 2012 FTA Review.

<b>FTA Training</b>				
<b>Date</b>	<b>Title of Training</b>	<b>Location</b>	<b>Objective of Training</b>	<b>Attendees</b>
<b>Prior to the 2012 Triennial Review the following training Seminar(s) took place</b>				
4/10/10 - 4/22/10	<b>Third Party Contracting Guidance</b>	Atlanta, GA	Provide grantees in third party contracting guidance and compliance with FTA Circular 4220.1F	Geri Sams, Nancy Williams, Lonnie Sutton
7/10 10 - 7/11/10	<b>In-house FTA Training</b>	Augusta, GA	Develop in-house procedures for FTA projects	Geri Sams, Heyward Johnson, Phyllis Johnson, Lonnie Sutton, Valerie Taylor, Sharon Dottery, Frank Hutto
2/16/11-2/17/11	<b>Financial Management Oversight</b>	Miami, FL	Review the criteria for establishing and maintain financial management systems that meet the requirements of 49 CFR	Heyward Johnson Geri Sams Susan Kain Sharon Dottery Juriah Lewis
<b>2013 - 2014 Trainings</b>				
4/3/13 - 4/4/13	<b>Bus Procurement Workshop</b>	Charlotte, NC	Assist FTA Grantees to comply with FTA bus procurement requirement	Phyllis Johnson Sheila Paulk Nancy Williams
10/29/13 - 10/31/13	<b>Disadvantaged Business Enterprise</b>	Charlotte, NC	Provide grantees an understanding of the application and administration of the Disadvantaged Business Enterprise	Geri Sams Phyllis Johnson Yvonne Genty Sharon Dottery Nancy Williams
12/2/13 - 12/4/13	<b>FTA 2014 Procurement System Review Workshop</b>	Atlanta, GA	Clarify FTA procurement requirements, review of procedures to comply with Circular 4220.1F	Phyllis Johnson, Nancy Williams
05/04/14	<b>Subcontracting and Data Collection Procedures – Contract Management</b>	Augusta, GA	Develop system for subcontracting tracking and utilization	Geri Sams, Yvonne Gentry, Connie Kelly-Crisler, Sheila Paulk, Nancy Williams
6/1/14 - 6/7/14	<b>One Solution Training - Contract Management</b>	Anaheim, CA	Review accounting module for contract management, subcontracting tracking and utilization.	Geri Sams, Yvonne Gentry, Sheila Paulk Nancy Williams
<b>Proposed FTA training</b>				
1/26/16 – 1/29/16	<b>Orientation to Transit Procurement</b>	San Bernardino, CA	Provide grantees in third party contracting guidance and compliance with FTA Circular 4220.1F	Geri Sams, Phyllis Johnson, Nancy Williams
4/12/16- 4/15/16	<b>Risk Assessment and Basic Cost or Price Analysis</b>	Cincinnati, OH	Provide grantees in third party contracting guidance and compliance with FTA Circular 4220.1F	Geri Sams, Phyllis Johnson, Nancy Williams

## APPENDIX 4

### GENERAL CONDITIONS

#### ARTICLE I--DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated, which are applicable to both the singular and plural thereof:

*Addenda*-Any changes, revisions or clarifications of the Contract Documents which have been duly issued by OWNER to prospective Bidders prior to the time of opening of Bids.

*Agreement*-The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

*Application for Payment*-The form accepted by PROFESSIONAL which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

*Bid*-The offer or proposal of the bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

*Bonds*-Bid, performance and payment bonds and other instruments of security furnished by CONTRACTOR and its Surety in accordance with the Contract Documents.

*Change Order*-- A document recommended by PROFESSIONAL, which is signed by CONTRACTOR and OWNER, and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

*Contract Documents*-The Agreement; Addenda (which pertain to the Contract Documents); CONTRACTOR's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement; the Bonds; these General Conditions; the Supplementary Conditions; the Plans, Specifications and the Drawings as the same are more specifically identified in the Agreement; Certificates of Insurance; Notice of Award; and Change Order duly delivered after execution of Contract together with all amendments, modifications and supplements issued pursuant to paragraphs 3.3 and 3.5 or after the Effective Date of the Agreement.

*Contract Price*-The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).

*Contract Time*-The number of days (computed as provided in paragraph 17.2.1) or the date stated in the Agreement for the completion of the Work.

*CONTRACTOR*-The person, firm or corporation with whom OWNER has entered into the Agreement.

*COUNTY*-Richmond County, Georgia, or Augusta, Georgia, political subdivisions of the State of Georgia, the Augusta, Georgia Commission, and its authorized designees, agents, or employees.

*Day*-Either a working day or calendar day as specified in the bid documents. If a calendar day shall fall on a legal holiday, that day will be omitted from the computation. Legal Holidays: New Year's Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Veterans Day, Thanksgiving Day and the following Friday, and Christmas Day.

*Defective*-An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to PROFESSIONAL's recommendation of final payment, unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion (in accordance with paragraph 14.8 or 14.10).

*Drawings*-The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by PROFESSIONAL and are referred to in the Contract Documents.

*Effective Date of the Agreement*-The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed by the Mayor of Augusta, Georgia.

*Field Order*-A written order issued by PROFESSIONAL that modifies Drawings and Specifications, but which does not involve a change in the Contract Price or the Contract Time.

*General Requirements*-Sections of Division I of the Specifications.

*Laws or Regulations*-Laws, rules, regulations, ordinances, codes and/or orders.

*Notice of Award*-The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

*Notice to Proceed*-A written notice given by OWNER to CONTRACTOR (with a copy to PROFESSIONAL) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

*OWNER*- Augusta, Georgia, and the Augusta, Georgia Commission.

*Partial Utilization*-Placing a portion of the Work in service for the purpose for which it is intended or for a related purpose) before reaching Substantial Completion for all the Work.

*PROFESSIONAL*-The Architectural/Engineering firm or individual or in-house licensed person designated to perform the design and/or resident engineer services for the Work.

*PROGRAM MANAGER* – The professional firm or individual designated as the representative of the OWNER who shall act as liaison between OWNER and both the PROFESSIONAL and CONTRACTOR when project is part of an OWNER designated program.

*Project*-The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part, as indicated elsewhere in the Contract Documents.

*Project Area*-The area within which are the specified Contract Limits of the improvements contemplated to be constructed in whole or in part under this Contract.

*Project Manager*-The professional in charge, serving OWNER with architectural or engineering services, his successor, or any other person or persons, employed by said OWNER, for the purpose of directing or having in charge the work embraced in this Contract.

*Resident Project Representative*-The authorized representative of PROFESSIONAL as PROGRAM MANAGER who is assigned to the site or any part thereof.

*Shop Drawings*-All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

*Specifications*-Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

*Subcontractor*-An individual, firm or corporation having a direct contract with CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the Work at the site.

*Substantial Completion*-The Work (or a specified part thereof) has progressed to the point where, in the opinion of PROFESSIONAL as evidenced by PROFESSIONAL's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be used for the purposes for which it is intended, or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

*Supplementary Conditions*-The part of the Contract Documents which amends or supplements these General Conditions.

*Supplier*-A manufacturer, fabricator, supplier, distributor, materialman or vendor.

*Underground Facilities*-All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasement containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.

*Unit Price Work*-Work to be paid for on the basis of unit prices.

*Work*-The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, and furnishing documents, all as required by the Contract Documents.

*Work Change Directive*-A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by PROFESSIONAL, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A *Work Change Directive* may not change the Contract Price or the Contract Time but is evidence that the parties expect that the change directed or documented by a *Work Change Directive* will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in Article 10.

*Written Amendment*-A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

## ARTICLE 2-PRELIMINARY MATTERS

### ***Delivery of Bonds:***

2.1. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with these Contract Documents.

### ***Copies of Documents:***

2.2. After the award of the Contract, OWNER shall furnish CONTRACTOR, at no cost, one (1) complete set of the Contract Documents for execution of the work. Additional sets of the project manual and drawings and/or individual pages or

sheets of the project manual or drawings will be furnished by COUNTY upon CONTRACTOR's request and at CONTRACTOR's expense, which will be OWNER's standard charges for printing and reproduction.

**Commencement of Contract Time, Notice to Proceed:**

2.3. The Contract Time shall commence as established in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Contract.

**Starting the Project:**

2.4. CONTRACTOR shall begin the Work on the date the Contract Time commences. No Work shall be done prior to the date on which the Contract Time commences. Any Work performed by CONTRACTOR prior to date on which Contract Time commences shall be at the sole risk of CONTRACTOR.

**Before Starting Construction:**

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to PROFESSIONAL any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from PROFESSIONAL before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, if CONTRACTOR knew or reasonably should have known thereof.

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to PROFESSIONAL and OWNER for review:

2.6.1. an estimated progress schedule indicating the starting and completion dates of the various stages of the Work:

2.6.2. a preliminary schedule of Shop Drawing and Sample submissions, and

2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.

2.7. Before any Work at the site is started, CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, an original policy or certified copies of each insurance policy (and other evidence of insurance which OWNER may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

**Pre-construction Conference:**

2.8. Before any Work at the site is started, a conference attended by CONTRACTOR, OWNER, PROFESSIONAL and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in 2.6 as well as procedures for handling Shop Drawings and other submittals, processing applications for payment and maintaining required records.

**Finalizing Schedules:**

2.9. At least ten days before submission of the first Application for Payment, a conference attended by CONTRACTOR, PROFESSIONAL and OWNER and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten (10) calendar days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until

the schedules are submitted and acceptable to OWNER and PROFESSIONAL as provided below. The finalized progress schedule will be acceptable to OWNER and PROFESSIONAL as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on PROFESSIONAL responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from full responsibility therefore. The finalized schedule of Shop Drawing submissions and Sample submissions will be acceptable to PROFESSIONAL as providing a workable arrangement for reviewing and processing the submissions. CONTRACTOR's schedule of values shall be approved by PROFESSIONAL as to form and substance.

CONTRACTOR, in addition to preparing an initially acceptable schedule, shall be responsible for maintaining the schedule, including updating schedule. Schedule updates shall include progression of work as compared to scheduled progress on work. Schedule updates shall accompany each pay request.

### ARTICLE 3-CONTRACT DOCUMENTS; INTENT,

#### AMENDING, REUSE

##### *Intent:*

3.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Georgia.

3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be supplied whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning.

3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in 3.6 or 3.7, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents) and the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation). Clarifications and interpretations of the Contract Documents shall be issued by PROFESSIONAL as provided in paragraph 9.4.

3.4. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.5. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in 6.7, CONTRACTOR shall so report to PROFESSIONAL in writing at once and before proceeding with the Work affected thereby and shall obtain a written interpretation or clarification from PROFESSIONAL; however, CONTRACTOR shall not be liable to OWNER or PROFESSIONAL for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

**Amending and Supplementing Contract Documents:**

3.6. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.6.1. a formal Written Amendment,
- 3.6.2. a Change Order (pursuant to paragraph 10.3), or
- 3.6.3. a Work Change Directive (pursuant to paragraph 10.4).

As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

3.7. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized in one or more of the following ways:

- 3.7.1. a Field Order (pursuant to paragraph 9.5).
- 3.7.2. PROFESSIONAL's approval of a Shop Drawing or sample (pursuant to paragraphs 6.24 and 6.26), or
- 3.7.3. PROFESSIONAL's written interpretation or clarification (pursuant to paragraph 9.4).

**Reuse of documents:**

3.8. Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or OWNERSHIP rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of PROFESSIONAL or PROFESSIONAL's consultant; and they shall not reuse such Drawings, Specifications or other documents (or copies of any thereof) on extensions of the Project or any other project without written consent of OWNER and PROFESSIONAL and specific written verification or adaptation by PROFESSIONAL.

**ARTICLE 4-AVAILABILITY OF LANDS, PHYSICAL CONDITIONS; REFERENCE POINTS****Availability of Lands:**

4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Necessary easements or rights-of-way will be obtained and expenses will be borne by OWNER. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, the CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

**Physical Conditions:**

4.2.1. *Explorations and Reports:* Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized in preparing the Contract Documents and those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized in preparing the Contract Documents.

4.2.2. CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER, PROFESSIONAL, or any of PROFESSIONAL's Consultants with respect to:

4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or

4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3. If conditions are encountered, excluding existing utilities, at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then CONTRACTOR shall give OWNER notice thereof promptly before conditions are disturbed and in no event later than 48 hours after first observance of the conditions.

4.2.4. The OWNER and PROFESSIONAL shall promptly investigate such conditions, and, if they differ materially and cause an increase or decrease in CONTRACTOR's cost of, or time required for, performance of any part of the Work, the OWNER and PROFESSIONAL shall recommend an equitable adjustment in the Contract Price or Contract Time, or both. If the OWNER and PROFESSIONAL determine that the conditions at the Site are not materially different from those indicated in the Contract Documents or are not materially different from those ordinarily found and that no change in the terms of the Contract is justified, the PROFESSIONAL shall notify CONTRACTOR of the determination in writing. The Work shall be performed after direction is provided by the PROFESSIONAL.

***Physical Conditions-Underground Facilities:***

4.3.1. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or PROFESSIONAL by OWNER'S of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and PROFESSIONAL shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for reviewing and checking all such information and data for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the OWNER'S of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2. *Not Shown or Indicated.* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby except in an emergency as permitted by paragraph 6.22, identify the OWNER of such Underground Facility and give written notice thereof to that OWNER and to OWNER and PROFESSIONAL. PROFESSIONAL will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract

Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

**Reference Points:**

4.4. OWNER shall provide Engineering surveys to establish reference points for construction which in PROFESSIONAL's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to PROFESSIONAL whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

**Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:**

4.5 OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.6 CONTRACTOR shall immediately: (i) stop all work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by 6.22), and (ii) notify OWNER and PROFESSIONAL (and thereafter confirm such notice in writing). OWNER shall promptly consult with PROFESSIONAL concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.7 If after receipt of such special written notice, CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then CONTRACTOR may order such portion of the Work that is in connection with such hazardous conditions or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have deleted such portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

4.7.1 The provisions of 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

**ARTICLE 5-BONDS AND INSURANCE**

**Performance and Other Bonds:**

5.1. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as Security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract

Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds, and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

#### **Licensed Sureties and Insurers; Certificates of Insurance**

5.2.1 All bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Georgia to issue bonds or insurance policies for the limits and coverages so required. All bonds signed by an agent must be accompanied by a certified copy of authority to act. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.2.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in 5.3, an original or a certified copy of the complete insurance policy for each policy required, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with 5.3.

5.2.3. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in an state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to OWNER.

#### **CONTRACTOR's Liability Insurance:**

5.3. CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

5.3.1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

5.3.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.3.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.3.4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;

5.3.5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

5.3.6. Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7. Claims for damages because of bodily injury or death of any person or property damage arising out of the OWNERSHIP, maintenance or use of any motor vehicle.

The insurance required by this paragraph 5.3 shall include the specific coverage's and be written for not less than the limits of liability and coverage's provided in the Supplementary Conditions, or required by law, whichever is greater. The comprehensive general liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER, PROGRAM MANAGER, and PROFESSIONAL by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two years after final payment and furnish OWNER with evidence of continuation of such insurance at final payment and one year thereafter.

***Contractual Liability Insurance:***

5.4. The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations under paragraphs 6.32 and 6.33.

***OWNER's Liability Insurance:***

5.5. OWNER shall be responsible for purchasing and maintaining OWNER's own liability insurance, and/or Risk Retention Program, and, at OWNER's option, may purchase and maintain such insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

***Property Insurance:***

5.6. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors, PROGRAM MANAGER, PROFESSIONAL and PROFESSIONAL's consultants in the Work, all of whom shall be listed as insureds or additional insured parties, shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of PROFESSIONALS, architects, attorneys and other PROFESSIONALS). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment.

5.7. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, PROFESSIONAL AND PROFESSIONAL's consultants in the Work, all of whom shall be listed as insured or additional insured parties.

5.8. All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days prior written notice has been given to CONTRACTOR by certified mail and will contain waiver provisions in accordance with paragraph of 5.11.2.

5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the Interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are provided in the Supplementary Conditions. The risk of loss within the deductible amount will be borne by CONTRACTOR,

Subcontractor or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policy, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

***Waiver of Rights:***

5.11.1. OWNER and CONTRACTOR waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraphs 5.6 and 5.7 and other property insurance applicable to the Work, and also waive all such rights against the Subcontractors, PROFESSIONAL, PROFESSIONAL's consultants and all other parties named as insureds in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between CONTRACTOR and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of OWNER, CONTRACTOR, PROFESSIONAL, PROFESSIONAL's consultants and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.11.2. OWNER and CONTRACTOR intend that policies provided in response to paragraphs 5.6 and 5.7 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by PROFESSIONAL or PROFESSIONAL's consultant, OWNER will obtain the same, and if such waiver forms are required of any Subcontractor, CONTRACTOR will obtain the same.

***Receipt and Application of Proceeds:***

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

***Receipt and Application of Insurance Proceeds***

5.13. OWNER, as trustee, shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER, as trustee, shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, OWNER as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.

***Acceptance of Insurance:***

5.14. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the Contract Documents, OWNER shall notify CONTRACTOR in writing thereof within ten days of the date of delivery of such certificates to OWNER in accordance with paragraph 2.7. If CONTRACTOR has any objection to the coverage afforded by or other provisions of the policies of insurance required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 on the basis of their not complying with the Contract Documents, CONTRACTOR shall notify OWNER in writing thereof within ten days of the date of delivery, of such certificates to CONTRACTOR in accordance with paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided by each as the other may reasonably request. Failure by OWNER or CONTRACTOR to give

any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.

***Partial Utilization-Property Insurance:***

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10 provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

***Indemnification***

5.16.1. CONTRACTOR shall indemnify and hold harmless OWNER, PROGRAM MANAGER, and its employees and agents from and against all liabilities, claims, suits, demands, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of its Work, provided that any such liability, claim, suit, demand, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (b) is caused in whole or in part by an act or omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, whether or not it is caused in whole or in part by the negligence or other fault of a party indemnified hereunder.

5.16.2. In any and all claims against OWNER or any of its agents or employees by any employee of CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts, or other employee benefit acts.

5.16.3. CONTRACTOR shall indemnify and hold harmless OWNER and anyone directly or indirectly employed by it from and against all claims, suits, demands, damages, losses expenses (including attorneys' fees) arising out of any infringement on patent or copyrights held by others and shall defend all such claims in connection with any alleged infringement of such rights.

**ARTICLE 6--CONTRACTOR'S RESPONSIBILITIES**

6.1. CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

6.2. CONTRACTOR shall keep on the Work, at all times during its progress, a competent resident superintendent, who shall not be replaced without written notice to OWNER and PROFESSIONAL except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

***Labor, Materials and Equipment:***

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent

thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit evening work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to PROFESSIONAL.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals whether temporary or permanent necessary for the execution, testing, initial operation, and completion of the Work as required by the Contract Documents.

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by PROFESSIONAL, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to PROFESSIONAL, or any of PROFESSIONAL's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.14 or 9.15.

***Adjusting Progress Schedule:***

6.6. CONTRACTOR shall submit to PROFESSIONAL for acceptance to the extent indicated in paragraph 2.9 adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

***Substitutes or "Or-Equal" Items:***

6.7.1. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by PROFESSIONAL if sufficient information is submitted by CONTRACTOR to allow PROFESSIONAL to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by PROFESSIONAL will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by PROFESSIONAL from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to PROFESSIONAL for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by PROFESSIONAL. In evaluating the proposed substitute, PROFESSIONAL may require CONTRACTOR to furnish, at CONTRACTOR's expense, additional data about the proposed substitute.

6.7.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to PROFESSIONAL, if CONTRACTOR submits sufficient information to allow PROFESSIONAL to determine that the substitute proposed is equivalent to that indicated or required by the Contract

Documents. The procedure for review by PROFESSIONAL will be similar to that provided in paragraph 6.7.1 as applied by PROFESSIONAL and as may be supplemented in the General Requirements.

6.7.3. PROFESSIONAL will be allowed a reasonable time within which to evaluate each proposed substitute. PROFESSIONAL will be the sole judge of acceptability and no substitute will be ordered, installed or utilized without PROFESSIONAL's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish, at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any substitute. PROFESSIONAL will record time required by PROFESSIONAL and PROFESSIONAL's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not PROFESSIONAL accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of PROFESSIONAL and PROFESSIONAL's consultants for evaluating each proposed substitute.

**Concerning Subcontractors, Suppliers and Others:**

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and PROFESSIONAL as indicated in paragraph 6.8.2) whether initially or as a substitute, against whom OWNER or PROFESSIONAL may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations including those who are to furnish the principal items of materials and equipment to be submitted to OWNER prior to the Effective Date of the Agreement for acceptance by OWNER and PROFESSIONAL and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or PROFESSIONAL's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be increased by the difference, and the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or PROFESSIONAL of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or PROFESSIONAL to reject defective Work.

6.9. CONTRACTOR shall be fully responsible to OWNER and PROFESSIONAL for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or PROFESSIONAL and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or PROFESSIONAL to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.10. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and PROFESSIONAL and contains waiver provisions as required by paragraph 5.11. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies issued pursuant to paragraphs 5.6 and 5.7.

**Patent Fees and Royalties:**

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. CONTRACTOR shall indemnify and hold harmless OWNER and PROFESSIONAL and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses including attorneys' fees and court and arbitration costs arising out of any infringement on patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

**Permits:**

6.13. CONTRACTOR shall obtain and pay for all construction permits, licenses, governmental charges and inspection fees, and all public utility charges which are applicable and necessary for the execution of the Work. All permit costs shall be included in the base bid. Permits, if any that are provided and paid for by OWNER are listed in the Supplementary Conditions. Any delays associated with the permitting process will be considered for time extensions only and no damages or additional compensation for delay will be allowed.

**Laws and Regulations:**

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor PROFESSIONAL shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2. If CONTRACTOR observes that any of the Contract Documents are contradictory to such laws, rules, and regulations, it will notify the Project Manager promptly in writing. Any necessary changes shall then be adjusted by an appropriate Change Order. If CONTRACTOR performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Project Manager, it shall bear all related costs.

**Taxes:**

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

**Use of Premises:**

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements. CONTRACTOR shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Any loss or damage to CONTRACTOR's or any Subcontractor's equipment is solely at the risk of CONTRACTOR. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the OWNER or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or PROFESSIONAL by any such OWNER or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of PROFESSIONALS, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris or contaminants resulting from the Work. At the completion of the Work, CONTRACTOR

shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger them.

**Record Documents:**

6.19. Contractor shall keep at the site and in good order one record copy of the Contract Documents and all Drawings and Specifications. These documents shall be annotated on a continuing basis to show all changes made during the construction process. These shall be available to PROFESSIONAL and the Project Manager and shall be submitted with the Application for Final Payment.

**Safety and Protection:**

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall assume all risk of loss for stored equipment or materials, irrespective of whether CONTRACTOR has transferred the title of the stored equipment or materials to OWNER. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all employees on the Work and other persons and organizations who may be affected thereby;

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site;  
and

6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify OWNERS of adjacent property and of Underground Facilities and utility OWNERS when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or PROFESSIONAL or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and PROFESSIONAL has issued a notice to OWNER and CONTRACTOR in accordance, with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21. CONTRACTOR shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the site. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to the Project Manager.

**Emergencies:**

6.22. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from PROFESSIONAL or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give PROFESSIONAL prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If PROFESSIONAL determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Change Directive or Change Order be issued to document the consequences of the changes or variations.

6.22.1. CONTRACTOR shall immediately notify PROFESSIONAL of all events involving injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, and shall file a written report on such person(s) and any other event resulting in property damage of any amount within five (5) days of the occurrence.

6.22.2. If PROFESSIONAL determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Order will be issued to document the consequences of such action.

**Shop Drawings and Samples:**

6.23. After checking and verifying all field measurements, CONTRACTOR shall promptly submit to PROFESSIONAL for approval, in accordance with the accepted schedule of submittals, all submittals and samples required by the Contract Documents. All submittals and samples shall have been checked by and stamped with the approval of CONTRACTOR and identified as PROFESSIONAL may require. The data shown on or with the submittals will be complete with respect to dimensions, design criteria, materials and any other information necessary to enable PROFESSIONAL to review the submittal as required. At the time of each submission, CONTRACTOR shall give notice to PROFESSIONAL of all deviations that the submittal or sample may have from the requirements of the Contract Documents.

6.24. PROFESSIONAL shall review and approve submittals and samples. Professional's review and approval shall be only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR will make any corrections required by PROFESSIONAL and resubmit the required number of corrected copies until approved. CONTRACTOR's stamp of approval on any submittal or sample shall constitute its representation to PROFESSIONAL and OWNER that CONTRACTOR has determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that each submittal or sample has been reviewed or coordinated with the requirements of the Work and the Contract Documents.

6.24.1. No Work requiring a submittal or sample submission shall commence until the submission has been approved by PROFESSIONAL. A copy of each approved submittal and each approved sample shall be kept in good order by CONTRACTOR at the site and shall be available to PROFESSIONAL and OWNER. Any delays associated with the submittal process will be considered for time extensions only, and no damages or additional compensation for delay will be allowed.

6.24.2. Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.24.3. At the time of each submission, CONTRACTOR shall give PROFESSIONAL specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to PROFESSIONAL for review and approval of each such variation.

6.26. PROFESSIONAL will review and approve with reasonable promptness Shop Drawings and samples, but PROFESSIONAL's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

6.27. PROFESSIONAL's approval of submittals or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has, in writing, called PROFESSIONAL's attention to each such variation at the time of submission and the OWNER has given written approval to the specific deviation; any such approval by PROFESSIONAL shall not relieve CONTRACTOR from responsibility for errors or omissions in the submittals.

6.28. Where a shop drawing or sample is required by the Contract Documents or the schedule of shop drawings and sample submissions accepted by PROFESSIONAL as required, any related work performed prior to PROFESSIONAL's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

***Continuing the Work:***

6.30. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.6 or as CONTRACTOR and OWNER may otherwise agree in writing.

***Cleaning Up:***

6.31. CONTRACTOR shall maintain the site free from accumulations of waste materials, rubbish, and other debris or contaminants resulting from the work on a daily basis or as required. At the completion of the work, CONTRACTOR shall remove all waste materials, rubbish, and debris from the site as well as all tools, construction equipment and machinery, and surplus materials and will leave the Site clean and ready for occupancy by OWNER. All disposal shall be in accordance with applicable Laws and Regulations. In addition to any other rights available to OWNER under the Contract Documents, CONTRACTOR's failure to maintain the site may result in withholding of any amounts due CONTRACTOR. CONTRACTOR will restore to original condition those portions of the site not designated for alteration by the Contract Documents.

***Indemnification:***

6.32. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, PROGRAM MANAGER and PROFESSIONAL and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of PROGRAM MANAGER, PROFESSIONALS, architects, attorneys and other PROFESSIONALS and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6.33. In any and all claims against OWNER, PROGRAM MANAGER or PROFESSIONAL or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.32 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.34. The obligations of CONTRACTOR under paragraph 6.32 shall not extend to the liability of PROFESSIONAL, PROFESSIONAL's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

## ARTICLE 7---OTHER WORK

### ***Related Work at Site:***

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by aided OWNERS or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work, and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

7.1.2. CONTRACTOR shall afford each utility OWNER and other contractor who is a party to such a direct contract for OWNER, if OWNER is performing the additional work with OWNER's employees, proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of PROFESSIONAL and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility OWNERS and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility OWNERS and other contractors.

7.2. If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility OWNER (or OWNER), CONTRACTOR shall inspect and promptly report to PROFESSIONAL in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

### ***Coordination:***

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither OWNER nor PROFESSIONAL shall have any authority or responsibility in respect of such coordination.

## ARTICLE 8---OWNER'S RESPONSIBILITIES

8.1. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through the PROGRAM MANAGER or PROFESSIONAL.

8.2. In case of termination of the employment of PROFESSIONAL, OWNER shall appoint a PROFESSIONAL against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former PROFESSIONAL. Any dispute in connection with such appointment shall be subject to arbitration.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing Engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by PROFESSIONAL in preparing the Drawings and Specifications.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.8.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.3.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

## **ARTICLE 9---PROFESSIONAL'S STATUS DURING CONSTRUCTION**

### ***OWNER's Representative:***

9.1. PROFESSIONAL will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of PROFESSIONAL as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and PROFESSIONAL.

### ***Visits to Site:***

9.2. PROFESSIONAL will make visits to the site at intervals appropriate to the various stages of construction to observe the premises and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. PROFESSIONAL will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. PROFESSIONAL's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design PROFESSIONAL, PROFESSIONAL will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

### ***Project Representation:***

9.3. If OWNER and PROFESSIONAL agree, PROFESSIONAL will furnish a Resident Project Representative to assist PROFESSIONAL in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If OWNER designates another agent to represent OWNER at the site who is not PROFESSIONAL's agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Supplementary Conditions.

### ***Clarifications and Interpretations:***

9.4. PROFESSIONAL shall issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be determined necessary, or as reasonably requested by CONTRACTOR, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification and interpretation entitles it to an increase in the Contract Price and/or Contract Time, CONTRACTOR may make a claim as provided for in Articles 11 or 12.

**Authorized Variations in Work:**

9.5. PROFESSIONAL may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

**Rejecting Defective Work:**

9.6. PROFESSIONAL will have authority to disapprove or reject Work which PROFESSIONAL believes to be defective and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

**Shop Drawings, Change Orders and Payments:**

9.7. In connection with PROFESSIONAL's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.29 inclusive.

9.8. In connection with PROFESSIONAL's responsibilities as to Change Orders, see Articles 10, 11 and 12.

9.9. In connection with PROFESSIONAL's responsibilities in respect of Applications for Payment, etc., see Article 14.

**Determinations for Unit Prices:**

9.10. PROFESSIONAL will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. PROFESSIONAL will review with CONTRACTOR PROFESSIONAL's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). PROFESSIONAL's written decisions thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other party to the Agreement and to PROFESSIONAL written notice of intention to appeal from such a decision.

**Decisions on Disputes:**

9.11. PROFESSIONAL will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes to the Contract Price or Contract Time will be referred initially to PROFESSIONAL in writing with a request for a formal decision in accordance with this paragraph, which PROFESSIONAL will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to PROFESSIONAL and the other party to the Agreement promptly (but in no event later than thirty days after the occurrence of the event giving rise thereto) and written supporting data will be submitted to PROFESSIONAL and the other party within sixty days after such occurrence unless PROFESSIONAL allows an additional period of time to ascertain more accurate data in support of the claim.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, PROFESSIONAL will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by PROFESSIONAL pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

***Limitations on PROFESSIONAL's Responsibilities:***

9.13. Neither PROFESSIONAL's authority to act under this Article or elsewhere in the Contract Documents nor any decision made in good faith to exercise such authority shall give rise to any duty or responsibility of PROFESSIONAL to CONTRACTOR, any Subcontractor, any of their agents or employees.

9.14. PROFESSIONAL shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. PROFESSIONAL shall not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

9.15. PROFESSIONAL shall not be responsible for the acts or omissions of CONTRACTOR, any Subcontractors, any agents or employees, or any other persons performing any of the Work.

**ARTICLE 10--CHANGES IN THE WORK**

10.1. Without invalidating the Contract, OWNER may at any time or from time to time order additions, deletions, or revisions in the Work. The OWNER shall provide CONTRACTOR with a proposal request, identifying the Work to be added, deleted or revised. Upon receipt, CONTRACTOR shall promptly submit a written proposal for the changed work prepared in accordance with Articles 11 and 12. If the proposal request calls only for the deletion of Work, the OWNER may order the partial suspension of any Work related to the proposed deletion, in which case CONTRACTOR must cease performance as directed; CONTRACTOR shall not be entitled to claim lost profits on deleted work. All changed Work shall be executed under the applicable conditions of the Contract Documents.

10.2. Additional Work performed by CONTRACTOR without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided in Article 6. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents.

10.3. Upon agreement as to changes in the Work to be performed, Work performed in an emergency as provided in Article 6, and any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price, PROFESSIONAL will prepare a written Change Order to be signed by PROFESSIONAL and CONTRACTOR and submitted to OWNER for approval.

10.4. In the absence of an agreement as provided in 10.3, OWNER may, at its sole discretion, issue a Work Change Directive to CONTRACTOR. Pricing of the Work Change Directive will be in accordance with Section 11.3. The Work Change Directive will specify a price, and if applicable a time extension, determined to be reasonable by OWNER. If CONTRACTOR fails to sign such Work Change Directive, CONTRACTOR may submit a claim in accordance with Articles 11 and 12, but CONTRACTOR shall nevertheless be obligated to fully perform the work as directed by the Work Change Directive.

10.5. CONTRACTOR shall proceed diligently with performance of the Work as directed by OWNER, regardless of pending claim actions, unless otherwise agreed to in writing.

10.6. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

**ARTICLE 11-CHANGE OF CONTRACT PRICE**

11.1. The Contract Price constitutes the total compensation (subject to written authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to PROFESSIONAL promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless PROFESSIONAL allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by PROFESSIONAL in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined by the following procedures:

11.3.1. Designated Unit Price (Field Measure). CONTRACTOR and OWNER recognize and acknowledge that the quantities shown for those items designated in the Bid Proposal as unit price items are approximations prepared by OWNER for bid purposes and that the actual compensation payable to CONTRACTOR for the utilization of such items is based upon the application of unit prices to the actual quantities of items involved as measured in the field and required to complete the Work as originally defined in the Contract Documents.

11.3.2. When it is determined by OWNER that an addition, deletion, or revision to the Work, as defined in these Contract Documents, is required and affects the quantities required for items designed in the Bid Proposal as unit price items, CONTRACTOR and OWNER agree that the compensation payable to CONTRACTOR for such unit price items shall be adjusted accordingly by a Change Order based upon the application of the appropriate unit prices shown in the Bid Proposal to the quantity of the unit price item required to complete the Work as defined in the Contract Documents.

11.3.3. Other Unit Prices. For items not designated in the bid proposal as unit prices, OWNER and CONTRACTOR may establish unit prices as agreed on by Change Order.

11.3.4. Lump Sum. When it is determined by OWNER that an addition, deletion or revision to the Work is required which results in a change in Work designated in the Bid Proposal as a lump sum item, the amount of increase or decrease in the lump sum price shall be established by mutual agreement of the parties.

11.3.5. If the pricing methods specified in 11.3 are inapplicable, or if the parties are unable to agree on a price for the changed work, a reasonable price for the same shall be established by OWNER in accordance with 11.4 and 11.5. OWNER shall then process a unilateral Change Order, specifying the said reasonable price, in accordance with 11.4 through 11.6. CONTRACTOR shall perform the Work as directed in the Change Order.

11.3.6. Failure on the part of CONTRACTOR to construct any item to plan or authorized dimensions within the specification tolerances shall result in: reconstruction to acceptable tolerances at no additional costs to OWNER; acceptance at no pay; or acceptance at reduced final pay quantity or reduced unit price, all at the discretion of OWNER. Determinations of aggregate monetary change for items identified as lump sum quantities shall be made by OWNER based upon an analysis of the scope of CONTRACTOR's failure to construct to plan or authorized dimensions.

**Cost of the Work:**

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in

amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. Trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who then determines, with the advice of PROFESSIONAL, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of PROFESSIONAL, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof-all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.6)

provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums of property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with paragraph 5.6.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4-all of which are to be considered administrative costs covered by CONTRACTOR's Fee.

11.5.2. Expenses of CONTRACTOR's principal area branch offices other than CONTRACTOR's office at the site.

11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR'S capital used for the Change Order Work and charges against CONTRACTOR for delinquent payments.

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly, employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

11.5.6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

#### **CONTRACTOR's Fee:**

11.6. CONTRACTOR's Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee, or if none can be agreed upon;

11.6.2. a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, CONTRACTOR's Fee shall be fifteen percent,

11.6.2.2. for costs incurred under paragraph 11.4.3, CONTRACTOR's Fee shall five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent,

11.6.2.3. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.3,

11.6.2.4. the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's Fee by an amount equal to ten percent of the net decrease, and

11.6.2.5. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.4, inclusive.

11.7. For all changes, CONTRACTOR shall submit an itemized cost breakdown, together with supporting data in such detail and form as prescribed by the Project Manager. When a credit is due, the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease in direct cost as determined by the Project Manager, plus the applicable reduction in overhead and profit. When both additions and credits are involved in any change, the combined overhead and profit shall be calculated on the basis of the net change, whether an increase or decrease. In any event, the minimum detail shall be an itemization of all man-hours required by discipline/trade with the unit cost per man-hour and total labor price, labor burden, equipment hours and rate for each piece of equipment, material by units of measure and price per unit, other costs specifically itemized, plus the overhead and profit markup.

**Cash Allowances:**

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to PROFESSIONAL CONTRACTOR agrees that:

11.8.1. The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site and all applicable taxes; and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by PROFESSIONAL to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

**Unit Price Work:**

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by PROFESSIONAL in accordance with Paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3. Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

**ARTICLE 12--CHANGE OF CONTRACT TIME**

12.1. The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to PROFESSIONAL and OWNER within seven (7) calendar days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to PROFESSIONAL and OWNER within fifteen (15) calendar days after such occurrence unless the OWNER allows additional time. All claims submitted by CONTRACTOR for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay and clearly indicate why the subject delay was beyond CONTRACTOR's control or fault.

12.2. If CONTRACTOR is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of OWNER or PROFESSIONAL, or by an employee of either, or by any separate CONTRACTOR employed by OWNER, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by CONTRACTOR using reasonable diligence, or any causes beyond CONTRACTOR's control or fault, then the Contract Time shall be extended by Change Order for such reasonable time as OWNER may determine. CONTRACTOR shall be entitled to an extension of time for such causes only for the number of days of delay which OWNER may determine to be due solely to such causes and only to the extent such occurrences actually delay the completion of the Work and then only if CONTRACTOR shall have strictly complied with all the requirements of the Contract Documents. Provided, however, notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which OWNER or PROFESSIONAL may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR's sole and exclusive remedy against OWNER for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension to the Contract Time in accordance with the procedures set forth herein.

**ARTICLE 13--WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK*****Warranty and Guarantee:***

13.1. CONTRACTOR warrants and guarantees to OWNER that all materials and equipment will be new unless otherwise specified and that all work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract Documents and any inspections, tests, or approvals referred to in this Article. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract Documents or such inspections, tests, approvals, or all applicable building, construction and safety requirements shall be considered defective. Notice of all defects shall be given to CONTRACTOR by PROFESSIONAL. All defective work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article.

***Access to Work:***

13.2. For the duration of the Work, PROFESSIONAL and its representatives, other designated representatives of OWNER, and authorized representatives of any regulatory agency shall at all times be given access to the Work. CONTRACTOR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing by others.

***Tests and Inspections:***

13.3. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than CONTRACTOR, CONTRACTOR shall give PROFESSIONAL timely notice of readiness therefore.

13.4. The testing firm(s) (if assigned by OWNER to this Work) and all such inspections, tests, or approvals provided for by OWNER shall be identified in writing by PROFESSIONAL to CONTRACTOR. All other inspections, tests or

approvals shall be at CONTRACTOR's expense including additional expenses for inspection and tests required as a result of delays by CONTRACTOR or hours worked in excess of 40 hours per week. For all required inspections, tests, and approvals on any Work prepared, performed, or assembled away from the site, CONTRACTOR will furnish PROFESSIONAL with the required Certificates of Inspection, testing, or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organizations as may be required by law or the Contract Documents. Materials or Work in place that fail to pass acceptability tests shall be retested at the direction of PROFESSIONAL and at CONTRACTOR's expense.

13.5. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by PROFESSIONAL if so specified).

13.6. If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of PROFESSIONAL, it must, if requested by PROFESSIONAL, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given PROFESSIONAL timely notice of CONTRACTOR's intention to cover the same and PROFESSIONAL has not acted with reasonable promptness in response to such notice.

13.7. Neither observations by PROFESSIONAL or Project Manager nor inspections, tests, or approvals by persons other than CONTRACTOR shall relieve CONTRACTOR of its obligations to perform the Work in accordance with the requirements of the Contract Documents.

***Uncovering Work:***

13.8. If any Work required to be inspected, tested or approved is covered prior thereto without the prior written approval of PROFESSIONAL, or if any Work is covered contrary to the request of PROFESSIONAL, the Work shall, if requested by PROFESSIONAL, be uncovered for observation, inspection, testing or approval and replaced at CONTRACTOR's expense.

13.9. If PROFESSIONAL considers it necessary or advisable that covered Work be observed by PROFESSIONAL or inspected or tested by others, CONTRACTOR, at PROFESSIONAL's request, shall uncover, expose or otherwise make available for observation, inspection or testing as PROFESSIONAL may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of PROFESSIONALS, architects, attorneys and other PROFESSIONALS), and OWNER shall be entitled to an appropriate decrease in the Contract Price and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

***OWNER May Stop the Work:***

13.10. When Work is defective or when CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment or make prompt payments to Subcontractors for labor, materials, or equipment or if CONTRACTOR violates any provisions of these Contract Documents, OWNER may order CONTRACTOR to stop the Work until the cause for such order has been eliminated. However, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party. CONTRACTOR shall have no right to claim an increase in the Contract Price or Contract Time or other damages for a stop work order under this paragraph.

***Correction or Removal of Defective Work:***

13.11. When directed by PROFESSIONAL, CONTRACTOR shall promptly, without cost to OWNER and as specified by PROFESSIONAL, either correct the defective Work whether fabricated, installed, or completed, or remove it from the site and replace it with non-defective Work. If CONTRACTOR does not correct such defective Work or remove and replace such defective Work within a reasonable time, as specified in a written notice from PROFESSIONAL, OWNER may have the deficiency corrected. All direct and indirect costs of such correction shall be paid by CONTRACTOR or deducted from payment to CONTRACTOR. CONTRACTOR will also bear the expense of correcting or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the defective Work.

***One Year Correction Period:***

13.12. If, after approval of final payment and prior to the expiration of one year after the date of substantial completion or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work or materials are found to be defective, incomplete, or otherwise not in accordance with the Contract Documents, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions, either correct such defective Work or if it has been rejected by OWNER, remove it from the Site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, OWNER may have the defective Work corrected, removed, or replaced. All direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR.

***Acceptance of Defective Work:***

13.13. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to PROFESSIONAL's recommendation of final payment, PROFESSIONAL) prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by PROFESSIONAL as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to PROFESSIONAL's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

***OWNER May Correct Defective Work:***

13.14. If CONTRACTOR fails within a reasonable time after written notice of PROFESSIONAL to proceed to correct defective Work or to remove and replace rejected Work as required by PROFESSIONAL in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously, to the extent necessary to complete corrective and remedial action. OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by PROFESSIONAL, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include, but not be limited to, fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of

repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

### ***Neglected Work by CONTRACTOR***

13.15. If CONTRACTOR neglects to execute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, PROFESSIONAL may direct CONTRACTOR to submit a recovery plan and take specific corrective actions including, but not limited to, employing additional workmen and/or equipment, and working extended hours and additional days, all at no cost to OWNER in order to put the Work back on schedule. If CONTRACTOR fails to correct the deficiency or take appropriate corrective action, OWNER may terminate the contract or CONTRACTOR's right to proceed with that portion of Work and have the Work done by others. The cost of completion under such procedure shall be charged against CONTRACTOR. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price. If the payments due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to OWNER.

13.16. Should CONTRACTOR work overtime, weekends or holidays to regain the schedule, all costs to OWNER of associated inspection, construction management and resident engineers shall be identified to CONTRACTOR and the Contract Price reduced by a like amount via Change Order.

## **ARTICLE 14-PAYMENTS TO CONTRACTOR AND COMPLETION**

### ***Schedule of Values:***

14.1. The schedule of values established as provided in 2.9 will serve as the basis for progress payments and will be incorporated into a form of application for Payment acceptable to Project Manager. Progress payments on account of Unit Price Work will be based on the number of units completed.

### ***Application for Progress Payment:***

14.2. At least twenty (20) calendar days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to PROFESSIONAL for review an application for Payment filled out and signed by CONTRACTOR covering the work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. Payment is subject to a ten percent (10%) retainage that will be held until the final payment or acceptance by OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

### ***CONTRACTOR's Warranty of Title:***

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

### ***Review of Applications for Progress Payment:***

14.4. PROFESSIONAL will, within ten (10) calendar days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the application to OWNER, or return the application to CONTRACTOR indicating in writing PROFESSIONAL's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the application. OWNER shall, within thirty-one calendar

days of presentation to him of the application for payment with PROFESSIONAL's recommendation of the amount for payment, pay CONTRACTOR amount recommended.

14.5. PROFESSIONAL's recommendation of any payment requested in an Application for Payment will constitute a representation by PROFESSIONAL to OWNER, based on PROFESSIONAL's on-site observations of the Work in progress as an experienced and qualified design PROFESSIONAL and on PROFESSIONAL's review of the Application for Payment and the accompanying data and schedules, that the Work has progressed to the point indicated; that, to the best of PROFESSIONAL's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation; and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, PROFESSIONAL will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to PROFESSIONAL in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

14.6. PROFESSIONAL's recommendation of final payment will constitute an additional representation by PROFESSIONAL to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7. PROFESSIONAL may refuse to recommend the whole or any part of any payment if, in PROFESSIONAL's opinion, it would be incorrect to make such representations to OWNER. PROFESSIONAL may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in PROFESSIONAL's opinion to protect OWNER from loss because:

14.7.1. the Work is defective, or completed Work has been damaged requiring correction or replacement.

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order.

14.7.3. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14. or

14.7.4. of PROFESSIONAL's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

OWNER may refuse to make payment of the full amount recommended by PROFESSIONAL because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling OWNER to a off-set against the amount recommended, but OWNER must give CONTRACTOR immediate written notice (with a copy to PROFESSIONAL) stating the reasons for such action.

***Substantial Completion:***

14.8. When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify OWNER and PROFESSIONAL in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that PROFESSIONAL issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and PROFESSIONAL shall make an inspection of the Work to determine the status of completion. If PROFESSIONAL does not consider the Work substantially complete, PROFESSIONAL will notify CONTRACTOR in writing giving the reasons therefor. If PROFESSIONAL considers the Work substantially complete, PROFESSIONAL will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during

which to make written objection to PROFESSIONAL as to any provisions of the certificate or attached list. If, after considering such objections, PROFESSIONAL concludes that the Work is not substantially complete, PROFESSIONAL will, within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing stating the reasons therefore. If, after consideration of OWNER's, objections, PROFESSIONAL considers the Work substantially complete, PROFESSIONAL will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as PROFESSIONAL believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion, PROFESSIONAL will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform PROFESSIONAL prior to PROFESSIONAL's issuing the definitive certificate of Substantial Completion, PROFESSIONAL's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

***Partial Utilization:***

14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work which (i) has specifically been identified in the Contract Documents, or (ii) OWNER, PROFESSIONAL, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and PROFESSIONAL that said part of the Work is substantially complete and request PROFESSIONAL to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and PROFESSIONAL in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request PROFESSIONAL to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and PROFESSIONAL shall make an inspection of that part of the Work to determine its status of completion. If PROFESSIONAL does not consider that part of the Work to be substantially complete, PROFESSIONAL will notify OWNER and CONTRACTOR, in writing, giving the reasons therefore. If PROFESSIONAL considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. OWNER may at any time request CONTRACTOR, in writing, to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to PROFESSIONAL and, within a reasonable time thereafter, OWNER, CONTRACTOR and PROFESSIONAL shall make an inspection of that part of the Work to determine its status of completion, and PROFESSIONAL will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and PROFESSIONAL that such part of the Work is not ready for separate operation by OWNER, PROFESSIONAL will finalize the list of items to be completed or corrected and will deliver such list to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed PROFESSIONAL). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

14.10.4. OWNER, may at its discretion, reduce the amount of retainage subject to Beneficial Occupancy.

***Final Inspection:***

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed upon portion thereof is complete, PROFESSIONAL will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

***Final Application for Payment:***

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of PROFESSIONAL and OWNER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by 5.2, certificates of inspection, marked-up record documents and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of liens and as approved by OWNER, CONTRACTOR may furnish receipts or release in full and an affidavit of CONTRACTOR that (i) the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.

14.12.1. No application for final payment will be accepted by OWNER until approved as-built documents by CONTRACTOR are accepted and approved by PROFESSIONAL.

14.12.2. Notwithstanding any other provision of these contract documents to the contrary, OWNER and PROFESSIONAL are under no duty or obligation whatsoever to any vendor, materials provider, Subcontractor, laborer or other party to ensure that payments due and owing by CONTRACTOR to any of them are or will be made. Such parties shall rely only on CONTRACTOR's surety bonds for remedy of nonpayment by him. CONTRACTOR agrees to defend and resolve all claims made by Subcontractors, indemnifying OWNER and PROFESSIONAL for all claims arising from or resulting from Subcontractor or supplier or material men or laborer services in connection with this project.

14.12.3. General Indemnity: CONTRACTOR shall indemnify OWNER and PROFESSIONAL for any damages sustained, including lost profits, resulting from CONTRACTOR's failure or refusal to perform the work required by these contract documents.

***Final Payment and Acceptance:***

14.13. If, on the basis of PROFESSIONAL's observation of the Work during construction and final inspection and PROFESSIONAL's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, PROFESSIONAL is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, PROFESSIONAL will, within ten (10) working days after receipt of the final Application for Payment, indicate in writing PROFESSIONAL's recommendation of payment and present the Application to OWNER for payment. At the same time PROFESSIONAL will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of 14.6. Otherwise, PROFESSIONAL will return the application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. After the presentation to OWNER of the application and accompanying documentation, in appropriate form and substance and with PROFESSIONAL's recommendation and notice of acceptability, the amount recommended by PROFESSIONAL will become due and will be paid by OWNER to CONTRACTOR.

14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if PROFESSIONAL so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of PROFESSIONAL and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Contract and if bonds have been furnished as required in Article 5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to PROFESSIONAL with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**CONTRACTOR's Continuing Obligation:**

14.15. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by PROFESSIONAL, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by PROFESSIONAL pursuant to paragraph 14.13, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.16).

**Waiver of Claims:**

14.16. The making and acceptance of final payment will constitute:

14.16.1. A waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled liens, from defective Work appearing after final inspection pursuant to 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

14.16.2. A waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

**ARTICLE 15--SUSPENSION OF WORK AND TERMINATION**

**OWNER May Suspend Work:**

15.1. OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and PROFESSIONAL which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

**Termination For Cause:**

15.2. Upon the occurrence of any one or more of the following events:

15.2. 1. if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2. if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3. if CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.4. if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

15.2.5. if CONTRACTOR admits in writing an inability to pay its debts generally, as they become due;

15.2.6. if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

15.2.7. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.8. if CONTRACTOR disregards the authority of PROFESSIONAL; or

15.2.9. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents,

OWNER may, after giving CONTRACTOR (and the surety, if there be one) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of PROFESSIONALS, architects, attorneys and other PROFESSIONALS and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by PROFESSIONAL and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, OWNER shall not be required to obtain the lowest price for the Work performed.

15.3. In the event OWNER terminates the contract for cause and it is subsequently judicially determined that there was no cause for termination, the termination for convenience provision will be the means for disposition of the balance of the contract obligations.

#### ***Termination for Convenience***

15.4. Upon seven working days' written notice to CONTRACTOR and PROFESSIONAL, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.4.1. For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

15.4.2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.4.3. For all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, suppliers and others; and

15.4.4. For reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.5. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

**CONTRACTOR May Stop Work or Terminate:**

15.6. If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety calendar days by OWNER or under an order of court or other public authority, or PROFESSIONAL fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty-one days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may upon seven working days' written notice to OWNER and PROFESSIONAL and provided OWNER or PROFESSIONAL did not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if PROFESSIONAL has failed to act on an Application for Payment within thirty days after it is submitted or OWNER has failed for thirty-one calendar days after it is submitted to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven days' written notice to OWNER and PROFESSIONAL stop the Work until receipt of payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Time or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.30 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

**ARTICLE 16--DISPUTE RESOLUTION**

16.1. All disputes arising under this Contract or its interpretation whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) working days of the commencement of the dispute be presented by CONTRACTOR to OWNER for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, CONTRACTOR shall proceed with the Work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) working days of its commencement, the claim will be considered only for a period commencing ten (10) working days prior to the receipt by OWNER of notice thereof. Each decision by OWNER will be in writing and will be mailed to CONTRACTOR by registered or certified mail, return receipt requested, directed to his last known address.

16.2 All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of, or relating to, the Contract Documents or the breach thereof shall be decided under Georgia Law in the Superior Court of Richmond County, Georgia. CONTRACTOR by execution of the Contract consents to jurisdiction and venue in the Superior Court of Richmond County, Georgia, and waives any right to contest same.

**ARTICLE 17-MISCELLANEOUS*****Giving Notice:***

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

***Computation of Time:***

17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

***General:***

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim should be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and PROFESSIONAL thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

17.5. CONTRACTOR shall keep adequate records and supporting documentation applicable to this Work and Contract. Said records and documentation shall be retained by CONTRACTOR for a minimum of five (5) years from the date of final completion or termination of this Contract. OWNER shall have the right to audit, inspect, and copy all such records and documentation as often as OWNER deems necessary during the period of the Contract and for a period of five (5) years thereafter provided, however, such activity shall be conducted only during normal business hours. OWNER, during this period of time, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of CONTRACTOR as concerns the aforesaid records and supporting documentation.

17.6. The Contract Documents are intended by the Parties to, and do, supersede any and all provisions of the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1, et seq. In the event any provision of the Contract Documents are inconsistent with any provision of the Prompt Pay Act, this provision of the Contract Documents shall control.

17.7. Notwithstanding any provision of the law to the contrary, the parties agree that no interest shall be due Contractor on any sum held as retainage pursuant to the Contract Documents and CONTRACTOR specifically waives any claim to same.

***Substitutions:***

17.8. Notwithstanding any provision of these general conditions, there shall be no substitutions of materials

that are not determined to be equivalent to those indicated or required in the contract documents without an amendment to the contract.

**Sanitary Sewer Overflow Prevention:**

17.9. Procedures to Prevent Overflows During Sanitary Sewer Construction:

17.9.1 The CONTRACTOR is hereby notified that the discharge of any untreated wastewater to waters of the State is a violation of Georgia Water Quality Regulations and is prohibited.

17.9.2 The CONTRACTOR will submit an Emergency Response Plan prior to beginning work. This plan will include a list of key personnel with 24-hour contact information who will respond during an emergency situation. The ERP will include estimates of mobilization time for a response crew to arrive onsite. Any changes to the Emergency Response Plan will be submitted to the RESIDENT PROJECT REPRESENTATIVE prior to implementation.

17.9.3 In the event bypass pumping is required to facilitate new sewer construction, bypassing plans and supporting calculations must be submitted to the Augusta Utilities Department for review prior to establishment of the bypass. All bypass systems will include complete redundancy in pumping systems, if failure of the primary pumping system could result in a discharge of untreated wastewater to waters of the State.

17.9.4 Bypass pumping will be monitored continuously by a person knowledgeable in pump operation and maintenance if the failure of the bypass pump could result in the discharge of untreated wastewater to waters of the State.

17.9.5 In the event of a discharge of untreated wastewater, the CONTRACTOR will take the following actions:

1. Take immediate steps to eliminate or minimize the discharge of untreated wastewater.
2. Immediately notify the Utilities Department dispatcher (706.796.5000) and the RESIDENT PROJECT REPRESENTATIVE (contact information will be provided at the preconstruction conference).
3. Maintain a chronicle of relevant information regarding the incident including specific actions taken by the CONTRACTOR and estimates of the discharge volume.

17.9.6 The RESIDENT PROJECT REPRESENTATIVE will coordinate notification of the Georgia Environmental Protection Division (800.241.4113) and the Augusta Emergency Management Agency if appropriate.

17.9.7 If, in the opinion of the RESIDENT PROJECT REPRESENTATIVE and the OWNER, the CONTRACTOR is not responding to an emergency situation in an appropriate manner, the Utilities Department will undertake necessary actions to abate an overflow situation. The cost of these actions will be the responsibility of the CONTRACTOR.

17.9.8 Following a discharge of untreated wastewater, a downstream inspection will be conducted by the Utilities Department to assess potential mitigation measures that may be required of the CONTRACTOR.

**PROGRAM MANAGER:**

17.10 The PROGRAM MANAGER

The presence or duties of PROGRAM MANAGER's personnel at the construction site, whether as onsite representatives or otherwise, do not make PROGRAM MANAGER or PROGRAM MANAGER's personnel in any way responsible for those

duties that belong to OWNER and/or the CONTRACTOR or other entities, and do not relieve the CONTRACTOR or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction Contract Documents and any health and safety precautions required by such construction work.

PROGRAM MANAGER and PROGRAM MANAGER's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty of inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the CONTRACTOR(s) or other entity or any other persons at the site except PROGRAM MANAGER's own personnel.

The presence of PROGRAM MANAGER's personnel at the construction site is for the purpose of providing to OWNER a greater degree of confidence that the completed construction work will conform generally to the construction documents and that the integrity of the design concept as reflected in the construction documents has been implemented and preserved by the construction contractor(s). PROGRAM MANAGER neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

For this AGREEMENT only, construction sites include places of manufacture for materials incorporated into the construction work, and construction contractors include manufacturers of materials incorporated into the construction work

## APPENDIX 5



### Augusta, Georgia Code (Excerpt)

#### **Sec. 1-10-8. Compliance with State and Federal Requirement.**

When the procurement transaction involves the expenditure of State or Federal funds, the transaction shall be conducted in accordance with any applicable mandatory State or Federal laws and authorized regulations. Notwithstanding where State and Federal assistance or contract funds are used in procurement transaction, **any applicable local requirements that are more restrictive than State or Federal requirements, but not in conflict therewith shall be followed.**

Bonds for FTA projects shall be followed in the following manner:

#### **FTA Bonding Requirements**

##### **Applicability to Contracts**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" 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 will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part to 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. Payment bond amounts required from Contractors are as follows:
  1. 50% of the contract price if the contract price is not more than \$1 million;
  2. 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  3. \$2.5 million if the contract price is more than \$5 million.



- d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

#### Flow Down

Bonding requirements flow down to the first tier contractors.

#### Model Clauses/Language

FTA does not prescribe specific wording to be included in third party contracts. FTA has prepared sample clauses as follows:

#### Bid Bond Requirements (Construction)

a. Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

b. Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) 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 [ninety (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 [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) 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 security 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 on this form, other than that requested, will render the bid unresponsive.

### Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

- 1 Performance bonds The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
- 2 The (Recipient) may require additional performance bond protection when a 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 penal amount of the existing bond or to obtain an additional bond.

#### c. Payment bonds

The penal amount of the payment bonds shall equal:

- 1 Fifty percent of the contract price if the contract price is not more than \$1 million.
  - a. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - b. Two and one half million if the contract price is more than \$5 million.
- 2 If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

### Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

#### a. The following situations may warrant a performance bond:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

#### b. When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
  2. The (Recipient) may require additional performance bond protection when a 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 penal amount of the existing bond or to obtain an additional bond.
- c. A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.
- d. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
1. The penal amount of payment bonds shall equal:
    - a. Fifty percent of the contract price if the contract price is not more than \$1 million;
    - b. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
    - c. Two and one half million if the contract price is increased.

#### **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

#### **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

#### **Warranty of the Work and Maintenance Bonds**

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to

(Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

**U.S. Department of Transportation  
Federal Transit Administration**

**Required Procurement Elements and Suggested Best Practices**

**1) Written Standards of Conduct**

(1) “The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.”

- d. “...no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.”
- e. “The recipient’s officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.”
- f. “To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient’s officers, employees, agents, board members, or by contractors or subrecipients or their agents.” [FTA C 4220.1F (MS Word), III, 1.a, b, c.]

**2) Contract Administration System**

“The Common Grant Rules require 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.” [FTA C 4220.1F (MS Word), III, 3.]

**3) Written Protest Procedures**

(1) “FTA expects each recipient to have appropriate written protest procedures, as part of its requirement to maintain or acquire adequate technical capacity to implement the project.

- f. Recipients are required “to notify FTA when they receive a third party contract protest to which this circular applies, and to keep FTA informed about the status of the protest.
- g. The protester must exhaust its administrative remedies by pursuing the recipient’s protest procedures to completion before appealing the recipient’s decision to FTA.

- h. The protestor must be an “interested party,” that is, “a party that is an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the third party contract at issue.
- i. FTA will limit its review of third party contract protests as follows:
  - 1. The recipient does not have protest procedures, or
  - 2. Has not complied with its protest procedures, or
  - 3. Has not reviewed the protest when presented an opportunity to do so.
  - 4. When a Federal law or regulation is involved...”FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA’s overall public transportation program.
- j. The protestor must deliver its appeal to the FTA Regional Administrator...within five (5) working days of the date when the protestor has received actual or constructive notice of the recipient’s final decision,” or ...”when the protestor has identified other grounds for appeal to FTA,” such as “the recipient’s failure to have or failure to comply with its protest procedures or failure to review the protest.” [FTA C 4220.1F (MS Word), VII, 1.a. b.

#### 4) Prequalification System

“A recipient may prequalify people, firms, or products for participation in its procurements provided that:

- d. ...lists used in acquiring property and services are current.
- e. ...lists include enough qualified sources to ensure maximum full and open competition.
- f. The recipient permits potential bidders or proposers to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation.” [FTA C 4220.1F (MS Word), VI, 1.c]

[Note: Grantees are not required, or encouraged, to have a prequalification system. Prequalification systems are difficult and costly to maintain in a way that does not inhibit competition. The intent of this element is to ensure that, if a grantee maintains a prequalification list for one or more products or services, or a qualified manufacturers list, such lists are current and provide full and open competition.]

### 5) Procedures for Ensuring Most Efficient and Economic Purchase

“Proposed procurements should be reviewed to avoid the purchase of property and services the recipient does not need (including duplicative items and unnecessary options)... Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase...To obtain the best value, lease versus purchase alternatives for acquiring property should be reviewed and, if necessary, an analysis should be obtained to determine the more economical alternative.” FTA requires the recipient to make a written determination of the cost of leasing the asset compared with the cost of purchasing or constructing it.” [FTA C 4220.1F (MS Word), IV, 1.b. c. e.]

### 6) Procurement Policies and Procedures

“Each recipient and subrecipient may use its own procurement procedures, provided that its procurements conform to applicable Federal law and regulations.” [FTA C 4220.1F (MS Word), III, 3.a.] “...the guidance within this circular applies to each Federal Transit Administration (FTA) recipient of Federal assistance....” [FTA C 4220.1F (MS Word), II, 1.]

[Return to the top of the document](#)

## II.2. INDIVIDUAL PROCUREMENT ELEMENTS

### 7) Independent Cost Estimate

“The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action ...as a starting point, the recipient must make independent estimates before receiving bids or proposals” [FTA C 4220.1F (MS Word), VI, 6.; BPPM § 2.3.2]

### 8) A&E Geographic Preference

“Geographic location may be a selection criterion [in procurements for architectural and engineering (A&E) services] provided an appropriate number of qualified firms are eligible to compete for the contract, given the nature and size of the project.” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (g); BPPM § 6.5]

### 9) Unreasonable Qualification Requirements

Example of situation restrictive of competition: “Unreasonable requirements placed on bidders or offerors in order for them to qualify to do business” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (a); BPPM § 2.4.2.1]

### 10) Unnecessary Experience and Excessive Bonding

Example of situation restrictive of competition: “Unnecessary experience” and “excessive bonding requirements... FTA does not require any bonding for rolling stock, services, maintenance operations, or any contracts other than construction....” [FTA C 4220.1F (MS Word), IV, 2.b.h. (1); BPPM § 2.4.2.1.]

### 11) Organizational Conflict of Interest

Example of situation restrictive of competition: “Organizational Conflict of Interest. An organizational conflict of interest occurs when any of the following circumstances arise:

- a. **Lack of Impartiality.** When the contractor is unable, or potentially unable, to render impartial assistance or advice to the recipient due to other activities, relationships, contracts, or other circumstances.

- b. **Impaired Objectivity.** When the contractor’s objectivity in performing the contract work is or might be otherwise be impaired due to other activities, relationships, contracts, or other circumstances.
- c. **Unfair Competitive Advantage.** The contractor has an unfair competitive advantage.” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (h); BPPM § 2.4.2.2.2]

## 12) Arbitrary Action

Example of situation restrictive of competition: “Taking any arbitrary action in the procurement process” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (j); BPPM § 2.4.2.1]

## 13) Brand Name Restrictions

Example of situation restrictive of competition: “Specifying only a ‘brand name’ product instead of allowing an ‘or equal’ product to be offered or failing to specify the brand name product’s salient characteristics” [FTA C 4220.1F (MS Word), VI, 2.a. (4) (f); BPPM § 2.4.2.1 and 2.4.2.2.1]

- a. “Detailed product specifications should be avoided if at all possible in favor of performance specifications.” ” [FTA C 4220.1F (MS Word), VI, 2.a. (1)]
- b. “When it is impractical or uneconomical to make a clear and accurate description of the technical requirements of the property... a ‘brand name or equal’ description may be used as a means to define the performance or other salient characteristics of a specific type of property. The recipient, however, must state the salient characteristics of the named brand that offerors must provide.” [FTA C 4220.1F (MS Word), VI, 2.a. (3); BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]

## 14) Geographic Preferences

Example of situation restrictive of competition: “Specifying statutorily or administratively imposed in-State or local geographical preferences or evaluating bids and proposals in light of such in-State or local geographical preferences. Specifically, an FTA recipient is prohibited ...from limiting their bus purchases to in-State dealers.” [FTA C 4220.1F (MS Word), VI, 2. a. (4) (g)]

## 15) Contract Term Limitation

- a. “To comply with 49 U.S.C 5325 (e)(1), a multi - year third party contract to purchase additional rolling stock and replacement parts may not have options that extend more than five years after the date of the original contract.”
- b. “FTA interprets this five-year period as covering the recipient’s rolling stock and replacement needs from the first day when the contract becomes effective to those at the end of the fifth year. This means that the contract may not encompass more rolling stock and replacement parts than the recipient needs within five years. The five-year rule does not mean delivery, acceptance, or even fabrication must be completed in five years – only that a contract is limited to purchasing no more than the recipient’s rolling stock or

replacement parts needs for five years based on the effective date of the contract.” [FTA C 4220.1F (MS Word), IV, 2.e.(10)]

#### 16) Written Procurement Selection Procedures

- a. “The Common Grant Rule...requires the recipient to have written procurement procedures.” [FTA C 4220.1F (MS Word), III, 3. a.; BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]
- b. “The Common Grant Rules require that each solicitation provide for the following...Identify all factors to be used in evaluating bids or proposals.” [FTA C 4220.1F (MS Word), VI, 2.e.; BPPM § 4.3.2, 4.4.1, 4.5.1, and 4.5.2]

#### 17) Solicitation Prequalification Criteria

A recipient may prequalify people, firms, or products for participation in its procurements provided that:

4. “**Lists.** The recipient ensures that all its prequalification lists used in acquiring property and services are current. [FTA C 4220.1F (MS Word), VI, 1.c.(1)]
5. “**Sources.** The recipient ensures that all its prequalification lists include enough qualified sources to ensure maximum full and open competition.” [FTA C 4220.1F (MS Word), VI, 1.c.(2)]
6. “**Qualification Periods.** The recipient permits potential bidders or proposers to qualify during the solicitation period (from the issuance of the solicitation to its closing date).” [FTA C 4220.1F (MS Word), VI, 1.c.(3)]

#### 18) Award to Responsible Contractors

“A recipient may award a contract ...only to a ‘responsible’ contractor capable of successfully performing under the terms and conditions of the contract. To determine responsibility, the recipient must consider the following criteria before awarding the contract:

6. **Integrity.** The contractor’s integrity;
7. **Public Policy.** The contractor’s compliance with public policy;
8. **Past Performance.** The contractor’s past performance;
9. **Financial and Technical Resources.** The contractor’s financial and technical resources, and;
10. **Debarment/Suspension.** Contractor’s status with respect to DOT regulations, ‘Governmentwide Debarment and Suspension (Nonprocurement),’ 49 CFR Part 29.” [FTA C 4220.1F (MS Word), VI, 8.b.]

#### 19) Sound and Complete Agreement

- d. “The Common Grant Rules require that all third party contracts include provisions adequate to form a sound and complete agreement.” [FTA C 4220.1F (MS Word), III, 3.b.]
- e. “Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.” [FTA C 4220.1F (MS Word), IV, 2.b. (6) 2]

- f. “For contracts exceeding \$10,000, there must be termination for cause and termination for convenience provisions.” [FTA C 4220.1F (MS Word), IV, 2.b. (6) 4]

#### **20) No Splitting [Micro-purchase]**

“...there should be ... no splitting of procurements to avoid competition.” [FTA C 4220.1F (MS Word), VI, 3.a.; BPPM § 4.1]

#### **21) Fair and Reasonable Price Determination [Micro-purchase]**

“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 this determination.” [FTA C 4220.1F (MS Word), VI, 3.a. (2) (c); BPPM § 4.1]

#### **22) Micro-Purchase Davis Bacon**

“Davis - Bacon prevailing wage and hour restrictions apply to construction contracts exceeding \$2,000.” [FTA C 4220.1F (MS Word), VI, 3.a.; BPPM § 4.1]

#### **23) Price Quotations [Small Purchase]**

“Price or rate quotations shall be obtained from an adequate number of qualified sources” [FTA C 4220.1F (MS Word), VI, 3.b.; BPPM § 4.2]

#### **24) Clear, Accurate, and Complete Specification**

- g. “Each solicitation must provide a clear and accurate description of the technical requirements for the property or services to be procured.” [FTA C 4220.1F (MS Word), VI, 2.a.; BPPM § 3]
- h. “In competitive procurements, the description may not contain features that unduly restrict competition.” [FTA C 4220.1F (MS Word), III, 3.a.(1) (b)]
- i. “The Common Grant Rule ... advises the recipient to describe technical requirements in terms of ‘functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.’” [FTA C 4220.1F (MS Word), III, 3.a.(1) (d)]
- j. “In order for sealed bidding to be feasible, the following conditions should be present: A complete, adequate, and realistic specification or purchase description is available.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (a)]
- k. “If this procurement method is used . . . the invitation for bids will include any specifications and pertinent attachments...in order for the bidder to properly respond.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (c)]

#### **25) Adequate Competition - Two or More Competitors**

- c. “In order for sealed bidding to be feasible, the following conditions should be present: . . . Two or more responsible bidders are willing and able to compete effectively for the business.” [FTA C 4220.1F (MS Word), VI, 3.c. (b)]
- d. “Competitive proposals is a procurement method normally conducted with more than one source submitting an offer or proposal.” [FTA C 4220.1F (MS Word), VI, 3.d.(2)(c)]

“. . .the procurement lends itself to a firm fixed price contract.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (c)]

**26) Firm Fixed Price [Sealed Bid]**

“. . .the procurement lends itself to a firm fixed price contract.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (c)]

**27) Selection on Price [Sealed Bid]**

“. . .the selection of the successful bidder can be made on the basis of price and those price-related factors included in the solicitation.” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (d)]

**28) Discussions Unnecessary [Sealed Bid]**

“No discussion with bidders is needed” [FTA C 4220.1F (MS Word), VI, 3.c. (1) (e)]

**29) Advertised/Publicized [Sealed Bid] [RFP]**

- d. “...sealed bidding (is) a procurement method in which bids are publicly solicited.” [FTA C 4220.1F (MS Word), VI, 3.c.]
- e. “The invitation for bids will be publicly advertised.” [FTA C 4220.1F, VI, 3.c. (2) (a)]
- f. “Procurement Procedures. The following procedures apply to procurements by competitive proposals: (a) Publicity. The request for proposals is publicly advertised.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (a)]

**30) Adequate Number of Sources Solicited [Sealed Bid] [RFP]**

3. “Bids shall be solicited from an adequate number of known suppliers...” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (b)]
4. “Procurement Procedures. The following procedures apply to procurements by competitive proposals: (c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (c)]

**31) Sufficient Bid Time [Sealed Bid]**

“Bids shall be solicited from an adequate number of known suppliers, providing time to prepare bids prior to the date set for opening the bids.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (d)]

**32) Bid Opening [Sealed Bid]**

“All bids will be publicly opened at the time and place prescribed in the invitation for bids” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (e)]

**33) Responsiveness [Sealed Bid]**

“A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.”

- c. “When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;”

- d. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (f)]

#### **34) Lowest Price [Sealed Bid]**

“A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (f)]

#### **35) Rejecting Bids [Sealed Bid]**

“Any or all bids may be rejected if there is a sound, documented business reason” [FTA C 4220.1F (MS Word), VI, 3.c. (2) (g)]

#### **36) Evaluation [RFP]**

“If this procurement method is used the following requirements apply: ...

- c. All evaluation factors will be identified in the procurement documents along with their relative importance; numerical or percentage ratings or weights, however, need not be disclosed... [FTA C 4220.1F (MS Word), VI, 3.d. (2) (b)]
- d. The recipient will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (d)]

#### **37) Price and Other Factors [RFP]**

“If this procurement method is used the following requirements apply: . . . Award will be made to the responsible firm whose proposal is most advantageous to the recipient’s program with price and other factors considered.” [FTA C 4220.1F (MS Word), VI, 3.d. (2) (e)]

#### **38) Sole Source if Other Award is Infeasible**

“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:” [FTA C 4220.1F (MS Word), VI, 3.i.(1)]

- e. “When the supplies or services are available from only one responsible source, and no other type of supplies or services will satisfy the recipient’s requirements; or” [FTA C 4220.1F (MS Word), VI, 3.i.(b)]
- f. “When the recipient’s need for the supplies or services is of such unusual and compelling urgency that the recipient would be seriously injured unless the recipient is permitted to limit the number of sources from which it solicits bids or proposals, or when the public exigency or emergency for the requirement will not permit a delay resulting from a competitive solicitation;” or [FTA C 4220.1F (MS Word), VI, 3.i.2(c)]
- g. “FTA authorizes noncompetitive negotiations;” or [FTA C 4220.1F (MS Word), VI, 3.i.2(e)]
- h. “After solicitation of a number of sources, competition is determined inadequate” [FTA C 4220.1F (MS Word), VI, 3.i.2]

**39) Cost Analysis Required [Sole Source]**

“A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders...” [FTA C 4220.1F (MS Word), VI, 6.a.]

**40) Evaluation of Options**

“Options may be included in contracts to assure the future availability of property or services. An option is a unilateral right in a contract by which, for a specified time, a recipient may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.” [FTA C 4220.1F (MS Word), IV, 1.d.]

- c. “In awarding the basic contract ... the recipient shall evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the recipient is likely to exercise the options.” [FTA C 4220.1F (MS Word), VI, 7.b.]
- d. “When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.” [FTA C 4220.1F (MS Word), V, 7.a. (1) (c) 1]

**41) Cost or Price Analysis**

- d. Cost analysis
  - i. “The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation . . . .” [FTA C 4220.1F (MS Word), VI, 6.]
  - ii. “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, etc.)” [FTA C 4220.1F (MS Word), VI, 6.a.]
  - iii. “A cost analysis will be necessary when adequate price competition is lacking . . . 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 . . . .” [FTA C 4220.1F (MS Word), VI, 6.a.]
  - iv. “A cost analysis will be necessary when adequate price competition is lacking . . . unless price reasonableness can be established on the basis of . . . prices set by law or regulation”. [FTA C 4220.1F (MS Word), VI, 6.a.]
  - v. “A cost analysis will be necessary . . . for 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 . . . .” [FTA C 4220.1F (MS Word), VI, 6.a.]

- vi. “A cost analysis will be necessary . . . for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of . . . prices set by law or regulation.” [FTA C 4220.1F (MS Word), VI, 6.a.]
- e. “A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.” [FTA C 4220.1F (MS Word), VI, 6.b.]
- f. Profit
  - i. “The recipient will negotiate profit as a separate element of the price for each contract in which there is no price competition . . .” [FTA C 4220.1F (MS Word), VI, 6.a.(3)]
  - ii. “The recipient will negotiate profit as a separate element of the price for each contract ...in all cases where cost analysis is performed.” [FTA C 4220.1F (MS Word), VI, 6.a.(3)]
  - iii. “To establish a fair and reasonable profit, consideration will be given to:
    - a. the complexity of the work to be performed,
    - b. the risk being borne by the contractor,
    - c. the contractor’s investment,
    - d. the amount of subcontracting,
    - e. the quality of its record of past performance, and
    - f. industry profit rates in the surrounding geographical area for similar work.” [FTA C 4220.1F (MS Word), VI, 6.a.(3)]

#### 42) Written Record of Procurement History

“The Common Grant Rules require the recipient to maintain...written records detailing the history of each procurement, as follows:

- e. **Procurement Method.** ...the rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive;
- f. **Contract Type.** ...state the reasons for selecting the contract type (fixed price, cost reimbursement, etc.);
- g. **Contractor Selection.** ...state the reasons for contractor selection or rejection...include a written responsibility determination for the successful contractor.
- h. **Cost or Price.** Each recipient must evaluate and state its justification for the contract cost or price.” [FTA C 4220.1F (MS Word), III, 3. d. (1)]

#### 43) Exercise of Options

“Options may be included in contracts to assure the future availability of property or services. An option is a unilateral right in a contract by which, for a specified time, a recipient may elect to

purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.” [FTA C 4220.1F (MS Word), IV, 1. d.]

- d. **“Consistency with the Contract.** A recipient must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.” [FTA C 4220.1F (MS Word), V, 7. a. (1) (a)]
- e. **“Price.** An option may not be exercised unless the recipient has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.” [FTA C 4220.1F (MS Word), V, 7. a. (1) (b)]
- f. **“Negotiating a Lower Option Price.** Exercising an option after a lower price has been negotiated constitutes a sole source procurement.” [FTA C 4220.1F (MS Word), V, 7. a. (1) (c) 2]

#### 44) Out of Scope Changes

“A contract change that is not within the scope of the original contract is considered a sole source procurement...” [FTA C 4220.1F (MS Word), VI, 3.i.(1)(b)]

#### 45) Advance Payments

“Advance payments are payments made to a contractor before the contractor incurs costs in the performance of the contract. The following principles and restrictions apply:

- c. **Use of FTA Funds Prohibited.** FTA does not authorize the use of Federal assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable....A recipient that seeks to use FTA or local share funds to support advance payments should contact its Regional Office to obtain FTA concurrence.” [FTA C 4220.1F (MS Word), IV, 2.b.(5)(b).1, 2]
- d. **Customary Advance Payments.** FTA concurrence is required only when advance payment or payments customarily required in the market place exceed \$100,000.” [The circular notes that advance payments falling into this category would include such things as utility services, and subscriptions to newspapers and magazines.] [FTA C 4220.1F (MS Word), IV, 2.b.(5)(b)2 b]

#### 46) Progress Payments

“Progress payments are payments for costs incurred by the contractor in the performance of the contract before the contract work has been completed. FTA assistance may be used to support progress payments provided:

- d. the recipient obtains adequate security for those payments, and
- e. has sufficient documentation to substantiate the work performed for which payment is requested.
- f. Progress payments for construction contracts may be made on a percentage of completion basis (as described in the Common Grant Rules). This payment method may not be used in non-construction contracts.” [FTA C 4220.1F (MS Word), IV, 2.b.(5)(c)]

#### 47) Time and Materials Contracts

“The Common Grant Rule ...permits the use of time and material type contracts only:

3. **Restricted Use.** After a determination that no other type of contract is suitable; and
4. **Firm Ceiling Price.** If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.” [FTA C 4220.1F (MS Word), VI, 2.c.(2)(b)]

#### 48) Cost Plus Percentage of Cost

“The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost and percentage of construction cost methods of contracting.” [FTA C 4220.1F (MS Word), VI, 2.c.(2)(a)]

#### 49) Liquidated Damages Provisions

“**Delay.** FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion and the extent or amount of such damages would be difficult or impossible to determine. The rate and measurement period must be specified in the third party contract and may not be excessive. The assessment for damages is usually established at a specific rate per day for each day beyond the contract’s delivery date or performance period, but a measurement period other than a day may be established if appropriate. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.” [FTA C 4220.1F (MS Word), IV, 2.b.(6)(b)1]

#### 50) Piggybacking

“**Assignment of Rights.** Although FTA does not encourage the practice, a recipient may assign its contractual rights to purchase property and services to other recipients if the original contract contains an appropriate assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded, or other appropriate assignment provisions. Some refer to this process as “piggybacking.”

- d. “If the supplies or services were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract.”
- e. “An FTA recipient that obtains these contractual rights through assignment may exercise them after first determining the contract price remains fair and reasonable, and all Federal requirements have been addressed in the contract’s clauses. The recipient is not required to perform a second price analysis if a price analysis was originally performed. However, the recipient must determine the contract price or prices originally established are still fair and reasonable.”
- f. “The recipient is responsible for Buy America compliance with the transaction and assuring that they execute all of the required pre-award and post-delivery Buy America audit certifications.” [FTA C 4220.1F (MS Word), V, 7. a. (2); BPPM Appendix B.16]

### 51) Qualifications Exclude Price [A&E]

**“When Required.** Qualifications-based proposal procedures are required for projects related to or leading to a construction project. These procedures must be used not only when contracting for architectural and engineering services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. Grantees shall use qualifications-based competitive proposal procedures [i.e. Brooks Act Procedures when contracting for A&E services as defined in 40 U.S.C. Sections 1101 - 1104 and 49 U.S.C. Section 5325(b)(1)]. When this procurement method is used, the following requirements apply: [FTA C 4220.1F (MS Word), VI, 3.f.(3)]

- d. **Qualifications.**— An offeror’s qualifications must be evaluated.
- e. **Price.** Price is excluded as an evaluation factor. .” [FTA C 4220.1F (MS Word), VI, 3.f.(3)(b)]
- f. **“Design-Build.** An FTA recipient must procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act...when the preponderance of the work to be performed is considered to be for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related A&E services. (A&E) services...qualifications-based competitive proposal procedures may not be used to procure design-build services when the preponderance of the work to be performed are services other than those listed in the previous sentence, unless required by State law.” [FTA C 4220.1F (MS Word), VI, 3.h.]

### 52) Serial Price Negotiations [A&E]

When this procurement method is used, the following requirements apply:

- c. **Most Qualified.** Negotiations are conducted with only the most qualified offeror; and
- d. **Next Most Qualified.** Failing agreement on price, negotiations with the next most qualified offeror and, if necessary, negotiations with successive offerors in descending order must be conducted until a contract award can be made to the offeror whose price the recipient believes is fair and reasonable.” [FTA C 4220.1F (MS Word), VI, 3.f.(3)]

### 53) Bid Security [Construction Over \$100,000]

**“Bonding.** The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

- 2. **Bid Guarantee.** Both FTA and the Common Grant Rules require a bid guarantee from each bidder equivalent 5 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 will honor its bid upon acceptance of his bid [FTA C 4220.1F (MS Word), IV, 2.h.(1)(a)]

#### 54) Performance Security [Construction Over \$100,000]

**“Bonding.** The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

- b. **Performance Bond.** Both FTA and the Common Grant Rules require 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” [FTA C 4220.1F (MS Word), IV, 2.h.(1)(b)]

#### 55) Payment Security [Construction Over \$100,000]

**“Bonding.** The Common Grant Rules require bonds for all construction contracts except to the extent FTA determines that the Federal interest is adequately protected through other arrangements. FTA’s bonding policies are as follows:

- b. **Payment Bond.** A ‘payment bond’ is one executed in connection with a contract to assure payment as required by law of all people supplying labor and material in the execution of the work provided for in the contract. FTA has determined the following payment bond amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
  1. **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million;
  2. **More Than \$1 Million but Less Than \$5 Million.** Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  3. **More Than \$5 Million.** Two and a half million dollars if the contract price is more than \$5 million.” [FTA C 4220.1F (MS Word), IV, 2.h.(1)(c)]

A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project, may submit its policy and rationale to its FTA Regional Office for approval.” [FTA C 4220.1F (MS Word), IV, 2.h.(1)(e)]

#### 56) Clauses

**“FEDERAL REQUIREMENTS THAT MAY AFFECT A RECIPIENT’S ACQUISITIONS.** Before FTA assistance may be used to support an acquisition of property or services, all applicable Federal requirements, whether or not addressed in the Common Grant Rules, must be fulfilled.” [FTA C 4220.1F (MS Word), IV, 2.]

[FTA Circular 4220.1F, Appendix D, contains a matrix of Federally required clauses and contractor certifications for various dollar values and types of procurements, such as construction, A&E. rolling stock, materials, etc. Instructions for these clauses and suggested clause language may be found in the FTA “Best Practices Procurement Manual,” Appendix A.1]