



# **Denton County Transportation Authority Procurement Policy and Procedures Manual**

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# Purchasing Policy Statement

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

It is the policy of the DCTA Board of Directors to:

- Ensure compliance with the Texas Transportation Code, Chapter 460 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.

DCTA shall maintain purchasing procedures that comply with all state and federal law and reflect the policy directive of the DCTA Board of Directors.

Resolution # N/A

Approved by Board of Directors October 27, 2011

# ARTICLE 1 - GENERAL PROVISIONS

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## *SECTION I - PURPOSE AND APPLICATION*

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### **1-101 PURPOSE**

The purpose of this policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the Denton County Transportation Authority (“DCTA”), to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity. The purpose of these procedures will serve as a guideline to avoid the purchase of unnecessary property and services. DCTA will contract only for its current and reasonably expected needs and may not add quantities or options to third party contracts solely to permit assignments to another party at a later date.

### **1-102 APPLICATION**

The proceeding policy and these procedures apply to the procurement of all goods and services entered by DCTA. It is consistent with and governed by Texas Transportation Code, Chapter 460; Section 2253, 2254.004, of the Texas Government Code, and when applicable the Federal Transit Administration Circular 4220.1F., and 2 CFR Part 200. 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 DCTA from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Contracts awarded or procurements funded with federal funds must comply with the requirements outlined in FTA Circular 4220.1F and other federal regulations as may be applicable for such procurement.

For contracts awarded or procurements funded by federal funds, federal requirements shall prevail over any provisions contained within this Procurement Policy that conflict with the federal requirements.

For all contracts awarded or procurements funded by federal 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 DCTA.

### **1-103 SUB-RECIPIENTS**

DCTA shall maintain oversight of all sub-recipients and shall ensure compliance with all federal requirements.

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**SECTION 2 - DEFINITIONS**

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**1-201            DEFINITIONS**

- (1)    *Director of Procurement*-The Director of Procurement for DCTA.
- (2)    *Blind Trust*. An independently managed trust in which the beneficiary has no management rights and in which the beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.
- (3)    *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 DCTA, and which provides for the submission of equivalent products.
- (4)    *Brand Name Specification*. A specification limited to one or more items by manufacturer's names or catalog numbers effectively becoming a sole source.
- (5)    *Best Value Criteria*: See Evaluation Criteria.
- (6)    *Business*. Any for profit or non-profit corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- (7)    *Confidential Information*. Any information which is available to a director, officer, employee, or agent of DCTA only because of the person's status as a director, officer, employee, or agent of DCTA 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.
- (8)    *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.
- (9)    *Contract*. All types of agreements between DCTA and other parties, regardless of what they may be called, for the procurement of supplies, services, or construction.
- (10)    *Contractor*. Any person having a contract with DCTA or a using agency thereof; provided, however, the term "Contractor" shall not include any individual who is paid a salary and/or benefits by DCTA pursuant to a contract that provides for that individual's employment by DCTA.
- (11)    *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 DCTA.

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.

(12) *Employee.* Shall mean an individual employed by DCTA.

(13) *Engineering Services.* Those professional services within the scope of the practice of engineering as defined in Texas Occupation Code §1001.003, as amended.

(14) *Evaluation Criteria:* Qualitative factors the 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.

(15) *Financial Interest.*

- (a) Ownership of any interest or involvement in any relationship with DCTA from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$600 per year, or its equivalent;
- (b) Ownership of 25% of any property or business; or
- (c) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

(16) *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.

(17) *Immediate Family.* Spouse, children, parents, brothers and sisters.

(18) *Request for Bids (IFB).* All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

(19) *Land Surveying Services.* Those professional services within the scope of the practice of professional surveying as defined in Texas Occupation Code §1071.002, as amended.

(20) *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.

(21) *Person*. Any business, individual, union, committee, club, other organization, or group of individuals.

(22) *Chief Executive Officer*. Shall mean the Chief Executive Officer of DCTA.

(23) *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.

(24) *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.

(25) *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.

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

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

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

(29) *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.

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

(31) *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.

(32) *Small Business.* A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(33) *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.

(34) *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.

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

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***SECTION 3 - PUBLIC ACCESS TO PROCUREMENT INFORMATION***

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**1-301 PUBLIC ACCESS TO PROCUREMENT INFORMATION**

Procurement information shall be a public record to the extent provided in Texas Government Code, Chapter 552, and, except for procurement information which may be withheld from disclosure by DCTA pursuant to Subchapter C, Chapter 552, of the Texas Government Code, as amended, or which cannot be disclosed pursuant to federal or state law, shall be available to the public as provided in such statutes.

## ARTICLE 2 - SOURCE SELECTION AND CONTRACT FORMATION

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### SECTION 1 - METHODS OF SOURCE SELECTION

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#### 2-101 METHODS OF SOLICITATION

(1) *Methods of Solicitation.* Pursuant to Section 460.406 of the Texas Transportation Code, DCTA may not award a contract for construction, services, or property, other than real property, except through the solicitation of competitive sealed bids or proposals ensuring full and open competition. However, the Board may authorize the negotiation of a contract without competitive sealed bids or proposals if:

- (a) the aggregate amount involved in the contract is \$50,000 or less;
- (b) the contract is for services or property for which there is only one source or for which it is otherwise impracticable to obtain competition;
- (c) the contract is to respond to an emergency for which the public exigency does not permit the delay incident to the competitive process;
- (d) the contract is for personal or professional services or services which competitive bidding is precluded by law;
- (e) the contract, without regard to form and which may include bonds, notes, loan agreements, or other obligations, is for the purpose of borrowing money or is part of a transaction relating to the borrowing of money;
- (f) the contract is for the purchase of land or a right-of-way;
- (g) the contract is for work performed and paid for by the day as the work progresses;
- (h) the contract is for the purchase of personal property sold at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17 Business & Commerce Code; or, by a political subdivision of the state of Texas, a state agency, or an entity of the federal government;
- (i) the contract is for services performed by blind or severely disabled persons;
- (j) the contract is for the purchase of electricity; or
- (k) the contract is one awarded for alternate project delivery provided it is through competitive sealed bids or proposals.

**2-102****COMPETITIVE SEALED BIDDING**

(1) *Conditions for Use.* All procurements estimated at a cost of \$50,000 or greater shall be awarded by competitive sealed bidding except as otherwise provided in Section 2-101.

(2) *Request for Bids (IFB).* A request for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement. The request for bid must include a complete, adequate, and realistic specification or purchase description. The specifications shall identify all requirements which the bidder must fulfill and all other factors to be used in evaluation of bids. The standard contract language that the successful proposer will be required to comply with, including applicable federal clauses and certifications. Sealed bid method is the preferred method for procuring construction.

(3) *Public Notice.* Notice inviting bids shall be published once a week for two consecutive weeks prior to the date set for closing the bid/proposals, the first notice to be no less than fourteen days prior to the closing date or as current State law requires. Federally funded projects shall be available for a minimum of twenty-one days prior to the closing date and shall be published on the State Electronic Business Daily.

(4) *Bid Opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the request for bids. The amount of each bid, and such other relevant information as Procurement deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection in accordance with Article 1, Section 1-301, (Public Access to Procurement Information).

(5) *Bid Acceptance and Bid Evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Policy. Bids shall be evaluated to determine if the bid is a responsive bid and the bidder a responsible bidder or the bidder that provides the best value to DCTA based on the requirements set forth in the request for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The request for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the request for bids. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.

(6) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards of contracts based on such bid mistakes may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received by procurement prior to the time and date set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of DCTA or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid. Unit price shall prevail in case of an extension error.

(b) The Director of Procurement reserves the right to cancel any award or resulting contract entered into before a material mistake was identified and justified by the bidder.

(7) *Award.*

- (a) The firm fixed price contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder or to the bidder who provides goods or services at the best value for DCTA and whose bid conforms with all the material terms and conditions of the request for bids and is the lowest in price. If specified in the solicitation documents a fixed price incentive or an economic price adjustment provision may be allowed. The award shall be made only to bidders who possess the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (b) In the event lowest responsive and responsible bid for a construction project exceeds available funds as certified by the Chief Executive Officer, and such bid does not exceed such funds by more than five percent, the Director of Procurement is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder, in order to bring the bid within the amount of budgeted funds.
- (c) The contract shall be awarded at the appropriate authority level as specified in 2-301 (Award Authority).
- (d) If DCTA elects to use the lowest responsive and responsible best value bidder selection method as the basis of award, the solicitation must contain the language which establishes that an award will be made on a “lowest responsive-responsible bidder” basis.

**2-103 PROPOSALS**

(1) *Conditions for Use.* When Procurement determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to DCTA, a contract may be entered into by use of the competitive sealed proposals or request for proposal method. All procurements estimated at a cost of \$50,000 or greater shall be awarded by competitive sealed proposals except as otherwise provided in Section 2-101.

(2) *Request for Proposals (RFP).* Proposals shall be solicited through a Request for Proposals (RFP) process.

- (a) The RFP may include but not be limited to:

- i. Pass/fail criteria to be used as an initial screening of responses for responsiveness and responsibility. Such criteria shall include, but not be limited to: insurance requirements, licensing and any other consideration which would make the proposer ineligible to perform the work;
- ii. All evaluation factors, type of evaluation (Best Value, Fixed price) and their relative importance; and,
- iii. The standard contract language that the successful proposer will be required to comply with, including applicable federal clauses and certifications.

(3) *Exception.* Pursuant to Texas Government Code Chapter 2254, Designated Professional Services, as defined in Section 2-104 (Contracting for Designated Professional Services), shall be procured utilizing a Request for Qualifications process.

(4) *Public Notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 2-102 (Competitive Sealed Bidding, Public Notice).

(5) *Receipt of Proposals.*

(a) The proposal shall include:

- (i) All required elements as specified in the RFP;
- (ii) A list of all proposed subconsultants and subcontractors, their area of the work, and identify certified DBEs, minority and women owned firms; and
- (iii) A cost or fee as required by the RFP.

(6) *Evaluation of Proposals.* An evaluation committee shall be established by DCTA to perform the assessment of the proposals based on the criteria and relative importance criteria established in the RFP. Procurement shall maintain summary evaluation document(s).

(7) *Discussions with Responsible Offerors and Revisions to Proposals.* As provided in the RFP, once proposals have been submitted, DCTA may conduct discussions/negotiations with the offerors whom DCTA determines to be reasonably qualified for the award of the contract. All offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of the proposal. DCTA may request additional documents during the evaluation process and may request best and final offers.

(8) *List of Qualified Firms.* The final list of qualified firms shall be based on the response to the RFP, technical evaluation, references, the interview and other relevant factors. The Director of Procurement shall make a recommendation which shall include the evaluation committee's recommendation for negotiations with one or more firms in the competitive range.

(9) *Award.*

- (a) Award shall be made to the responsible offeror whose proposal is determined to be the most advantageous to DCTA, based on the relative importance of price and the other evaluation factors included in the request for proposals. Negotiations may then begin with the recommended proposer.
- (b) The award shall be made only to offerors who possess the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (b) If compensation cannot be agreed upon with the most qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror(s), in the order of their respective qualification ranking in the evaluation process.
- (c) The contract shall be awarded at the appropriate authority level as specified in 2-301 (Award Authority).
- (d) If DCTA uses the best value selection method as the basis of award, the solicitation must contain the language which establishes that an award will be made on a “best value” basis.

**2-104      REQUEST FOR QUALIFICATIONS FOR DESIGNATED PERSONAL OR PROFESSIONAL SERVICES**

(1) *Conditions for Use.* Pursuant to Section 460.406(c) (5), contracts for personal or professional services are precluded from the competitive bidding requirements. However, at the discretion of the Director of Procurement, Requests for Qualifications may be used to solicit contracts for personal or professional services in accordance with this Subsection. Services for professional services shall be in accordance with Local Government Code 2254 and the Brooks Act for federally funded procurements.

(2) *Designated Professional Services.* Designated professional services are defined as services provided by a licensed or registered professionals. They include the following services:

- (a) accountant;
- (b) architect;
- (c) landscape architect;
- (c) land surveyor;
- (d) professional engineer;
- (e) licensed real estate appraiser;

- (f) physician; or
- (g) registered nurse.

(3) *Request for Qualifications (RFQ)*. Statements of Qualifications shall be solicited through a Request for Qualifications process.

(a) The RFQ shall include:

- (i) A comprehensive scope of work;
- (ii) Pass/fail criteria to be used as an initial screening of qualifications for responsiveness and responsibility. Such criteria shall include, but not be limited to: insurance requirements, licensing and any other consideration which would make the firm ineligible to perform the work;
- (iii) All evaluation factors and their respective scoring weights; and,
- (iv) The standard contract language that the most qualified firm will be required to comply with, including applicable federal clauses and certifications.

(4) *Evaluation of Qualifications*. Procurement shall summarize evaluation materials to be maintained in the procurement file. The most qualified proposer shall be that proposer whose weighted score was the highest.

(5) *Discussions*. As part of the evaluation process, DCTA may conduct discussions with any proposer who submitted a statement of qualifications. Discussions shall not disclose any information derived from statements of qualifications submitted by other proposers.

(6) *List of Qualified Firms*. The final list of qualified firms shall be based on the response to the RFQ, technical evaluation, references, the interview and other relevant factors. The Director of Procurement shall authorize a recommendation which shall include the evaluation committee's recommendation for negotiations with the most qualified proposer. Negotiations would proceed in compliance with state law.

(7) *Award*.

- (a) Award shall be made to the proposer determined in writing to be most highly qualified based on the evaluation factors set forth in the request for qualifications and discussions, if applicable, and negotiation of compensation determined to be fair and reasonable. If DCTA is unable to negotiate a contract with the most highly qualified proposer, DCTA must then formally end negotiations with that proposer. After negotiations have formally ended, DCTA must select the next most highly qualified proposer and attempt to negotiate a contract with that proposer.
- (b) If statements of qualifications were submitted by one or more proposers determined to be the qualified, negotiations may be conducted with such proposer in the order

of their respective qualification ranking, and the contract may be awarded to the proposer then ranked most qualified if the amount of compensation is determined to be fair and reasonable.

- (c) If the award is for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services the selection shall be based on qualifications excluding price. In accordance with the Brooks Act 40 U.S.C. Sections 1101 through 1104. Negotiations are first conducted with the most qualified offeror. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Negotiations with the previous offeror are formally ended before negotiations with the next most qualified offeror are commenced. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.
- (d) If the award is for architectural, engineering and related services a geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

The award shall be made only to proposer who possess the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to such matters contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

- (e) The contract shall be awarded at the appropriate authority level as specified in 2-301 (Award Authority).

## **2-105 CONSTRUCTION MANAGER AGENT METHOD**

(1) *General.* DCTA may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using this method and in entering into a contract for the services of a construction manager-agent, DCTA shall follow the procedures prescribed in this policy and by the Texas Local Government Code and other applicable laws.

(2) *Definition.* A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as an agent for DCTA by providing construction administration and management services for the construction, rehabilitation, alteration, or repair of the facility. DCTA may require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties, and on-site management and other services as specified in the contract. A construction manager-agent represents DCTA in a fiduciary capacity.

(3) *Procedure.* Before or concurrently with selecting a construction manager-agent, DCTA shall select or designate an engineer or architect who shall prepare the construction

documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupation Code, as applicable. If the engineer or architect is not a full-time employee of DCTA, DCTA shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. DCTA's engineer or architect may not serve, alone or in combination with another person as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with Local Government Code.

(4) *Selection of Construction Manager-Agent.* DCTA shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004, Government Code.

(5) *Other Contractors.* DCTA shall procure, in accordance with applicable law, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(6) *Testing, Inspection, and Verification Services.* DCTA or the construction manager-agent shall procure in accordance with Government Code 2254.004 all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by DCTA.

## **2-106 CONSTRUCTION MANAGER AT RISK METHOD**

(1) *General.* DCTA may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-at-risk, DCTA shall follow the procedures prescribed in this policy and by the Texas Local Government Code and other applicable laws.

(2) *Definition.* A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repairs of a facility at the contracted price as a general contractor and provides consultation to DCTA regarding construction during and after the design of the facility.

(3) *Procedure.* DCTA may use the construction manager-at-risk provided it follows the procedures prescribed herein and all applicable state and federal laws.

## **2-107 DESIGN BUILD METHOD**

(1) *General.* DCTA may use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. In using this method, DCTA must comply with applicable legal requirements including those outlined in Chapter 2267 of the Texas Government Code and the requirement of policy which include the following:

- (a) selecting a contracting method; If federally funded, prior to solicitation DCTA will determine the preponderance of the costs of the project. If the preponderance is for A&E

services a qualification-based method of procurement will be used. If the preponderance of the costs will be construction DCTA will use either a request for bid or a request for proposal method to procure.

- (b) giving public notice of the project;
- (c) publishing contract selection criteria; and
- (d) making evaluations public after the contract is awarded.

When entering into a contract for the services of a design-build firm, DCTA and the design-build firm shall follow the procedures below:

(2) *Architect/Engineer.* DCTA shall designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If DCTA's engineer or architect is not a full-time employee of DCTA, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Government Code 2254.004.

(3) *Request for Qualifications.* DCTA shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. If the preparation of the design criteria package requires engineering within the meaning of Occupations Code Title 6, Chapter 1001, or the practice of architecture within the meaning of Occupations Code Title 6, Chapter 1051, those services shall be provided in accordance with the applicable law.

(4) *Evaluation.* DCTA shall evaluate statements of qualifications and select a design-build firm in two phases:

Phase One: Qualifications

- (a) In Phase One, DCTA shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror shall certify to DCTA that each engineer or architect who is a member of its team was selected based on demonstrated competence and qualifications, in the manner provided by Government Code 2254.004. DCTA shall qualify a maximum of five offerors to submit additional information and, if DCTA chooses, to interview for final selection.

Phase Two: Proposals

- (a) In Phase Two, DCTA shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. DCTA may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. DCTA may not require offerors to submit detailed engineering or architectural designs as part of the proposal.
- (b) DCTA shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. DCTA shall select the design-build firm that submits the proposal offering the best value for DCTA on the basis of the published selection criteria and on its ranking evaluations.
- (c) DCTA shall first attempt to negotiate a contract with the selected offeror. If DCTA is unable to negotiate a satisfactory contract with the offeror, DCTA shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of selection ranking until a contract is reached or negotiations with all ranked offerors end.

(5) *Design:*

- (a) Following selection of a design-build firm, the firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to DCTA or DCTA's engineer or architect before or concurrently with construction.
- (b) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Occupations Code Title 6, Chapter 1001. An architect shall have responsibility for compliance with the requirements of Occupations Code Title 6, Chapter 1051.

(6) *Inspection, Testing, and Verification Testing Services.* DCTA shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by DCTA. DCTA shall select those services for which it contracts in accordance with Government Code 2254.004.

(7) *Completion of Project.* The design-build firm shall supply a signed and sealed set of construction documents for the project to DCTA at the conclusion of construction.

(8) *Payment or Performance Bond.* A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract that includes design services only.

(9) *Amount.* If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to DCTA must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the tenth day after the date the design-build firm executes the contract, unless the design-build firm furnishes a bid bond or other financial security acceptable to DCTA to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

## **2-108 MICRO AND SMALL PURCHASES**

(1) *General.* Any contract not exceeding \$49,999 may be made in accordance with the small purchase procedures authorized in this Section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this Section.

(2) *Micro-Purchases \$10,000 or Less.* The Director of Procurement shall adopt operational procedures for making micro-purchases of \$10,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition for the supply, service, or construction being purchased. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document the qualified competition obtained, properly account for the funds expended, in compliance with the requirements of the procurement, type of funds involved (local/ Federal) and facilitate an audit for the small purchase made. Departments shall submit the purchasing request to Procurement for review. The department shall be responsible for ensuring the procurement is within the departments approved budget. The Department shall document the determination that the price is fair and reasonable and the methodology of the determination. Documentation must be maintained in the procurement files. Purchases shall not be divided into multiple purchases to avoid requirements is prohibited. If competitive quotes are not obtained for the purchase an equitable distribution must be made to qualified suppliers. The Micro-purchase limit does not apply to federally funded construction related purchases of \$2,000 or greater. Construction” means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property. Certified payroll requirements will apply to construction contracts exceeding \$2,000. Any procurement for construction related projects shall be processed by procurement.

(3) *Small Purchases \$10,001- \$49,999.* Departments shall submit the purchasing request, specifications for purchase to Procurement for review. The department shall be responsible for ensuring the procurement is within the departments approved budget. Procurement shall conduct a request for quotes and include all required contract clauses, federal clauses and

certifications as required. The process for small purchases shall follow a process similar to the sealed bid or proposal processes. Documentation must be maintained in the procurement files. Splitting purchases into multiple purchases to avoid requirements is prohibited.

## **2-109           SOLE SOURCE PROCUREMENT**

A contract may be awarded without competition when the Director of Procurement determines in writing, after conducting a good faith review of available sources, that there is only one source due to patents, copyright, secret processes, or natural monopolies for the required supply, service, or construction item. This also includes the purchase of captive replacement parts or components for equipment if those parts or components are available from only one source. Procurement shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file. The Sole source justification documents must be approved and signed by the appropriate signature level and the Director of Procurement before the purchase is completed. The Sole Source Justification and Approval Form is attached in the Appendix, Form A.

Documentation required for a federally funded sole source procurement shall include:

1. Infeasible to use small purchase, sealed bid or competitive procedures
  - a. Item is available only from a single source;
  - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
  - c. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from DCTA.
  - d. After a solicitation of a number of sources, competition is determined inadequate.
2. Independent cost estimate
3. Cost or price analysis is required.

## **2-110           TIME AND MATERIALS CONTRACT**

Time and materials type contracts may only be used after a determination that no other type of contract is suitable. The contract must set a ceiling price that the contractor shall not exceed except at its own risk. DCTA is not permitted to use federal funds unless it determines that no other type of contract is suitable for the procurement.

Time and materials type contracts mean a contract whose cost to the agency is the sum of:

1. The actual cost of materials; and
2. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

## **2-111           COST PLUS PERCENTAGE CONTRACTS**

Federal guidelines prohibit the use of cost-plus percentage of cost type contracts for federally funded procurements.

**2-112 REVENUE CONTRACTS**

Competitive procedures shall be used to procure revenue contracts to permit interested parties an equal opportunity. The method of procurement will be determined based on the goods or services to be procured.

**2-113 EMERGENCY PROCUREMENT**

Notwithstanding any other provisions of this Policy, the Director of Procurement may make or authorize others by written delegation to make emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of contract, a listing of the item(s) procured under the contract, and the identification number of the contract files. Emergency procurements at or above Board approval shall be approved by the Board as soon as possible.

**2-114 CANCELLATION OF REQUESTS FOR BIDS OR REQUESTS FOR PROPOSALS**

A request for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for the good cause and in the best interest of DCTA. The reasons for the cancellation shall be made part of the contract file. Each solicitation issued by DCTA shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of DCTA. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

**2-115 FEDERAL PROCUREMENT REQUIREMENTS**

Contracts awarded or procurements funded by federal funds must comply with the requirements outlined in the most current versions of FTA Circulars and federal regulations. (Federal regulations prevail over any provisions contained within this Procurement Policy that may conflict with the federal regulations.

1. Third party contract clauses must be included in all federal assisted contracts and or procurements to form a sound and complete agreement. Determination of the required clauses will be made by the Procurement based on the requirements as stated in FTA Circular 4220.1F and CFR Part 200.

2. Independent costs estimates must be developed and documented in the procurement file prior to the receipt of bids and based on the requirements of the guiding FTA Circulars and federal regulations. An independent cost estimate form is attached in the Appendix, Form C.
3. Procurement will search the system for award management (SAMS) to confirm the status of the contractor's debarment and suspension status before entering into any federal funded contract or procurement. The documentation shall be placed in the procurement history file for future reference.
4. Procurement and staff shall perform a cost or price analysis for all procurements based on the requirements of the most current version of the applicable FTA circular and federal regulations. Cost or price analysis must be completed on all contract modifications before the modification is approved. Cost and Price analysis forms are attached in the Appendix, Forms D and E. Cost and profit analysis must be performed and documented when adequate price competition is lacking. The cost principles for evaluation of proposed costs shall be consistent with federal cost principles.
5. Federal guidelines prohibit any arbitrary action in the procurement process.
6. Federal guidelines prohibit the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals unless federal statutes expressly mandate or encourage preference.
7. Federal guidelines prohibit the use federal monies to make payments to a third-party contractor before the contractor has incurred the costs for which the payments would be attributable.
8. DCTA may use federal funds to support progress payments provided sufficient written documentation is provided to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the financial interest in the progress payment.
9. Liquidated Damages may be used if DCTA reasonably expects to suffer damages through delayed contract completion. The rate and measurement standards must be calculated to reasonably reflect DCTA's costs should the standards not be met and must be specified in the contract.
10. Contracts in excess of \$10,000 shall contain termination for cause and termination for convenience provisions.
11. Contracts above the small purchase threshold must contain remedies for breach of contract.

12. Cardinal Changes and Tag-Ons: A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change and is sometimes informally referred to as a “tag-on”. Federal guidelines prohibit the use of tag-ons.
13. All federally funded procurements will be in compliance with federal statutory and regulatory requirements as outlined.
14. Federal guidelines prohibits unreasonable business, experience, prequalification and bonding requirements from being placed on firms in order to do business with DCTA.
15. Organizational Conflicts of Interest. Engaging in practices that result in organizational conflicts of interest as prohibited by the Common Grant Rules:
  - 1 Occurrence. An organizational conflict of interest occurs when any of the following circumstances arise:
    - a Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
    - b Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
    - c Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
  - 2 Remedies. FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.
    - (b) Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

## **2-116 ROLLING STOCK PROCUREMENTS**

Contract term limitation for rolling stock and replacement parts shall not exceed five (5) years inclusive of options for bus fleet and seven (7) years for railcars.

All third-party contracts to acquire rolling stock must include provisions to ensure compliance with applicable requirements of 49 USC Section 5323 and FTA regulations, Pre-Award and Post-Delivery audits of rolling stock purchases. The documentation shall be made a part of the procurement history files. A pre-award and post-delivery review checklist is attached in Appendix, Form F.

A solicitation checklist is attached in Appendix A, Form G, to be completed on all federal procurements. The checklist will be maintained in the Procurement documentation file for future reference.

## **2-117 OPTIONS**

Contracts may include options to ensure the future availability of property or services if justification can be shown that options are needed for public transportation or project purposes. Option quantities must be evaluated at the time of the contract award. When exercising options, ensure the options are in accordance with the contract and the price is better than prices available in the market or is more advantageous at the time the option is exercised.

## **2-118 LEASE VERSUS PURCHASE**

To obtain the best value a review of lease versus purchase alternative for acquiring property should be completed and if necessary, obtain an analysis to determine the more economical alternative. DCTA may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. FTA approval must be obtained prior to entering into a lease agreement.

## **2-119 DESIGN- BID- BUILD**

The design-bid-build procurement method requires separate contracts for design services and for construction.

Design Services a qualifications-based procurement procedure must be completed in compliance with applicable Federal, State and local law and regulations.

Construction Services may be procured using a sealed bid or competitive negotiation procurement method. Procedures for competitive sealed bid shall follow the criteria stated in section 2-102. Procedures for competitive negotiation method shall follow the criteria stated in section 2-103.

## **2-120 EXISTING CONTRACTS AND PIGGYBACKING**

DCTA may find it advantageous to use existing contract rights and may use existing contracts if certain conditions are met. DCTA encourages the use of existing contracts with the state and

other local intergovernmental agreements

- (1) Exercise of Options: DCTA may use contract options held by another agency with the following limitations:
  - (a) DCTA shall ensure the terms and conditions of the options sought are substantially similar to the terms and conditions as stated in the original contract at the time it was awarded.
  - (b) DCTA shall determine that the option price is better than pricing available in the marketplace.
  - (c) Award shall be treated as sole source procurement if the awarding agency failed to evaluate the options at the time the original contract was awarded. Negotiating a lower or higher price after the initial award shall also be considered a sole source procurement.

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## ***SECTION 2 - QUALIFICATIONS AND DUTIES***

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### **2-201 RESPONSIBILITY OF BIDDERS AND OFFERORS**

(1) *Determination of Responsibility.* Award shall be made to bidders or offerors who have been determined to be a responsible contractor possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. A written determination of responsibility is required and shall be made part of the contract file.

(2) *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 Director of Procurement. 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.

(3) *Right of Disclosure.* Information furnished by a bidder or offeror pursuant to this Section shall not be disclosed by DCTA outside of the office of the Director of Procurement, or using agency, without prior written consent by the bidder or offeror.

### **2-202 BID AND PERFORMANCE BONDS ON SUPPLY OR SERVICE CONTRACTS**

Bid bonds, performance and payment bonds or other security may be required for supply contracts or service contracts as Procurement deems advisable to protect DCTA's interests. Any

such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

**2-203 BID, PERFORMANCE, AND PAYMENT BONDS FOR PUBLIC WORKS AND OTHER CONTRACTS REQUIRED**

(1) *When Required-Amounts.* When a construction or facility improvement contract or other contract is awarded requiring a performance and payment bond in dollar amounts consistent with state or Federal law, the following bonds or security shall be delivered to DCTA and shall become binding on the parties upon the execution of the contract:

- (a) a performance bond satisfactory to DCTA, executed by a surety company authorized to do business in Texas or otherwise secured in a manner satisfactory to DCTA, in the amount equal to 100% of the price specified in the contract; and
- (b) a payment bond satisfactory to DCTA, executed by a surety company authorized to do business in Texas or otherwise secured in a manner satisfactory to DCTA, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.
- (c) a bid bond satisfactory to DCTA, executed by a surety company authorized to do business in Texas or otherwise secured in a manner satisfactory to DCTA, in the amount equal to five (5) percent of the bid price.

Government Code 2253 mandates specific dollar amounts for all projects procured.

- (d) Maintenance Bonds may be required as determined by the owner department and Procurement.

(2) *Authority to Require Additional Bonds.* Nothing in this Section shall be construed to limit the authority of DCTA to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section.

(3) *Suits on Payment Bonds-Right to Institute.* Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors for the work provided in the contract, for which a payment bond is furnished under this Section, and who has not been paid in full within 90 days from the date on which that person performed the last of the labor or supplied the material, shall have the right to sue the prime contractor on the payment bond for any amount unpaid at the time the suit is instituted and to prosecute the action for the amount due that person. However, any person having a contract with a subcontractor of the contractor, but no express or implied contract with the contractor furnishing the payment bond, shall have the right of action upon the payment bond upon giving written notice to the contractor within 90 days from the date on which that person performed the last of the labor or supplied the material. That

person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

**2-204 PRE-QUALIFICATIONS OF BIDDERS OR OFFERORS**

DCTA may prequalify individuals, firms, and property for procurement purposes based on the following standards:

- (1) Lists. Prequalification lists shall be current.
- (2) Sources. The prequalification lists shall include sufficient qualified sources to provide maximum full and open competition.
- (3) Qualification Periods. DCTA will permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). However, DCTA shall not hold a particular solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor will DCTA expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period.

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**SECTION 3 - TYPES OF CONTRACTS AND CONTRACT ADMINISTRATION**

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**2-301 AWARD AUTHORITY**

(1) *Award Authority*. The table below identifies the level of award authority by contract amount. (Refer to Resolution No. R 19-03 as amended for additional authority of the Chief Executive Officer.)

<b><i>Contract Amount</i></b>	<b><i>Level of Authority to Award</i></b>
\$75,000 or less and within approved budget limit	Chief Executive Officer or designee
More than \$75,000	Board of Directors
Emergency Procurement	Chief Executive Officer with approval at subsequent Board meeting
Personal or Professional services \$50,000 or less	Chief Executive Officer or designee

**2-302 CONTRACT CLAUSES AND THEIR ADMINISTRATION**

(1) *Standard Clauses and Their Modification*. The Director of Procurement, in consultation with DCTA General Counsel as needed, may establish standard contract clauses for

use in DCTA contracts.

**2-303 CONTRACT ADMINISTRATION**

A contract administration system shall be maintained to ensure that a contractor is performing in accordance with the solicitation, under which the contract was awarded, and the terms and conditions of the contract.

The contract administration procedures are outlined and attached as Exhibit A.

**2-304 RIGHT TO AUDIT RECORDS**

(1) *Contract Audit.* DCTA shall be entitled to audit the books and records of a contractor or a subcontractor at any tier under any negotiated contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

**2-305 DCTA'S PROCUREMENT RECORDS**

- (1) (1) *Contracting File.* All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for DCTA in a contract file by Procurement. Procurement shall maintain records sufficient to detail the history of procurement. These records will include, but not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (2) *Retention of Procurement Records.* All procurement records shall be retained and disposed of by DCTA in accordance with records retention guidelines and appropriate regulations.

**2-306 CONTRACTOR RECORDS**

If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

- (1) requiring the contractor and subcontractors at any tier to maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (2) requiring the contractor and subcontractor at any tier to provide to DCTA, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purpose of examining, auditing, and copying them.

## **ARTICLE 3 - SPECIFICATIONS**

### **3-101           MAXIMUM PRACTICABLE COMPETITION**

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying DCTA's needs and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for DCTA by architects, engineers, designers, and draftsmen.

The solicitation and resulting contract must include a clean and accurate description of the technical requirements for the goods or services to be acquired and will provide for full and open competition. In order to ensure objective performance and eliminate unfair competitive advantage, firms that develop or draft specifications, requirements, statements of work, or request for bids or requests for proposals must be excluded from competing for such procurements.

### **3-102           BRAND NAME OR EQUAL SPECIFICATION**

(1) *Use.* Brand name or equal specifications may be used when Procurement determines in writing that:

- (a) no other design or performance specifications or qualified products list is available;
- (b) time does not permit the preparation of another form of purchase description, not including a brand name specification;
- (c) the nature of the product or the nature of DCTA's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (d) use of a brand name or equal specification is in DCTA's best interest.

(2) *Designation of Several Brand Names.* Brand names or equal specification shall seek to designate as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) *Required Characteristics.* Unless Procurement determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand names or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(4) *Nonrestrictive Use of Brand Name or Equal Specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

**3-103 BRAND NAME SPECIFICATION**

(1) *Use.* Since use of a brand name is restrictive of product competition, it may be used only when Procurement makes a written determination that only the identified brand name item or items will satisfy DCTA's needs.

(2) *Competition.* Procurement shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 2-109 (Sole Source Procurement).

## **ARTICLE 4 – PROTESTS AND DISPUTES**

### **4-101 SCOPE OF COVERAGE**

This article provides for administrative remedies for protests against solicitations and awards, suspensions and debarments, and contractual disputes. The remedies are intended to foster public confidence in the integrity of DCTA's procurement process and provide for fair and impartial resolution of controversies in an expeditious and cost-efficient manner.

### **4-102 SOLICITATION PROVISION**

All solicitations for Authority contracts shall contain the following provisions:

By submission of a bid, proposal, offer, or quotation in response to this solicitation, the bidder or offeror agrees to exhaust its administrative remedies under Article 5 of the DCTA's Procurement Policy or the Disputes Clause of any resulting contract prior to seeking judicial relief of any type in connection with any matter related to this solicitation, the award of any contract, and any dispute under any resulting contract. Article 5 may be obtained from the Director of Procurement upon request.

## ARTICLE 5 - ADMINISTRATIVE REMEDIES

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### SECTION 1 – REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

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#### 5-101 REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

(1) *Prior to Bid Opening or Closing Date for Receipt of Proposals.* If prior to the bid opening or the closing date for receipt of proposals, the Director of Procurement, after consultation with the General Counsel, determines that a solicitation is in violation of federal, state, or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.

(2) *Prior to Award.* If after bid opening or the closing date for receipt of proposals, the Director of Procurement, after consultation with DCTA’s General Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law, then the solicitation or proposed award shall be canceled.

(3) *After Award.* If, after an award, the Director of Procurement, after consulting with the General Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:

- (a) if the person awarded the contract has not acted fraudulently or in bad faith:
  - (i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of DCTA; or
  - (ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or
- (b) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void or voidable, if such action is in the best interests of DCTA.

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### SECTION 2 – PROTEST PROCEDURES

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#### 5-201 RIGHT TO PROTEST

Any interested party who is directly aggrieved or adversely affected in connection with the solicitation or award of a contract may protest to DCTA and appeal any adverse decision in accordance with the provisions of this Section. Interested parties are encouraged to seek resolution of their complaint initially with the Director of Procurement who issued the solicitation. Any such complaint must be made in writing.

**5-202 DEFINITIONS**

- (1) *Interested Party.* An actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or a prospective or actual award of a contract or by the protest.
- (2) *Protest.* A claim that there has been a violation of law of these regulations or some other impropriety in connection with a DCTA procurement.
- (3) *Protester.* Any interested party who files a protest.

**5-203 AUTHORITY OF THE DIRECTOR OF PROCUREMENT TO SETTLE BID PROTESTS**

The Director of Procurement is authorized to settle any protest regarding the solicitation or award of a contract prior to an appeal to the Chief Executive Officer.

**5-204 BID PROTESTS**

(1) *Right to Protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to DCTA. Protestors are urged to seek resolution of their complaints initially with the Director of Procurement. In the event that the Protestor is unsatisfied with the Director of Procurement's decision, the Protestor may appeal to the Chief Executive Officer.

A pre-bid protest with respect to a request for bids or request for proposals shall be submitted in writing prior to the due date of bids or proposals.

A pre-award protest with respect to the award must be received after receipt of proposals or bids, but before award of a contract.

A post-award protest must be received after award of a contract.

The protest must contain information related to the reason(s) why the protesting party disagrees and shall include all facts and justification, including technical information. The protest of an award shall be submitted within fifteen (15) calendar days of the official award notification. Protests shall be submitted in writing to:

DCTA  
Director of Procurement  
PO Box 96  
Lewisville TX 75057  
Or emailed to: [Procurement@dcta.net](mailto:Procurement@dcta.net)

DCTA will respond to the protestor that the protest has been received. DCTA will respond to protestor upon determination of a decision.

(2) *Stay of Procurements During Protests.* In the event of a timely protest under Subsection (1) of this Section, the Director of Procurement shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Chief Executive Officer makes a determination on the record that the award of a contract

without delay is necessary to protect substantial interests of DCTA.

(3) *Appeal to the Chief Executive Officer.* The protest shall be submitted in writing to the Chief Executive Officer no later than five (5) calendar days from the date of DCTA's action. The protest shall, at a minimum, identify the decision in question, specify all reasons why the protesting party disagrees with the decision, and shall include all facts and justification, including technical information, in support of its position. The Chief Executive Officer may request additional information from the protesting party and information or a response from other bidders, which shall likewise be submitted in writing to the Chief Executive Officer not later than ten (10) calendar days from the date of DCTA's request. So far as practicable, protest appeals will be decided upon the basis of the written protest appeal, information and written response submitted by the appealing party and other bidders. All parties are urged to make written submissions as complete as possible. Failure of any party to timely respond to a request for information may be deemed by DCTA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit response, and in such event the appeal will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent investigation deemed appropriate by DCTA, the Chief Executive Officer shall render a decision which shall be final and advise all interested parties of same in writing.

Parties dissatisfied with the final decision of the Chief Executive Officer, whether following review of the written submission or informal hearing, may utilize the appeal procedure set forth in FTA Circular 4220.1F. and subsequent updates. A copy of these procedures may be obtained from DCTA's Director of Procurement.

(4) *FTA Funded projects.* DCTA is required to notify FTA upon receipt of a third-party protest.

a. DCTA shall notify FTA upon receipt of a protest involving FTA funded procurements and must keep FTA informed of the status of the protest.

b. All protests decisions must be in writing.

c. A protester must exhaust all administrative remedies with DCTA before pursuing a protest with FTA.

d. FTA will only intervene if DCTA fails to follow protest procedures as outlined in this section.

## **ARTICLE 6 - COOPERATIVE PURCHASING**

### **6-101 JOINT PURCHASING AGREEMENTS**

DCTA may enter into agreements with other businesses, state governments, federal governments, local and city governments for procurements made jointly, so long as purchases executed are in the best interest of DCTA. All such purchases shall comply with this policy, and all applicable local, state, and/or federal requirements.

## **ARTICLE 7 - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES**

### **7-101           DISADVANTAGED BUSINESS ENTERPRISE POLICY**

All purchases executed by DCTA shall comply with DCTA's Disadvantaged Business Enterprise (DBE) Policy.

As a recipient of federal funds DCTA must comply with applicable requirements in accordance with DOT regulations as outlined in 49 CFR Part 26. Section 1101 (b) of MAP 21, 23 U.S.C. Section 101, extends the Federal statutory requirements that DCTA make available at least 10 percent of its federal funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged persons.

### **7-102 SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

DCTA will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring small and minority businesses, and women's business enterprises are solicited as potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

## **ARTICLE 8 - ETHICS IN PUBLIC CONTRACTING**

### **8-101 APPLICATION**

This Article shall govern the performance of DCTA officers, employees, board members, and agents engaged in the award or administration of procurements and resulting contracts. For the purpose of this Article, "DCTA officer" means any DCTA officer, employee, board member or agent.

### **8-102 CRIMINAL PENALTIES**

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of this policy, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Part. Criminal, civil, and administrative sanctions against employees or non-employees which are in existence on the effective date of this Policy shall not be impaired.

### **8-103 CONFLICT OF INTEREST**

It shall be unethical for any DCTA employee, officer or agent or board member or his or her immediate family member, partner, or organization that employs any of the foregoing from participating in the election, award, or administration of a contract. Such a conflict of interest would arise when the employee, officer or agent;

- (a) or any member of DCTA officer's immediate family has a financial or other interest pertaining to the procurement contract; or
- (b) any other person, business, or organization with whom a DCTA officer or any member of a DCTA officer's immediate family is negotiating or has an arrangement concerning prospective employment, is involved in the procurement contract.
- (c) Officers, employees or agents of DCTA may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

A DCTA officer or any member of a DCTA officer's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

### **8-104 GRATUITIES AND KICKBACKS**

(1) *Gratuities.* It shall be unethical for any person to offer, give, or agree to give any DCTA officer or former DCTA officer, or for any DCTA officer or former DCTA officer to solicit, demand, accept, or agree to accept from another person, a gratuity, gift, favor, or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of

any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) *Kickbacks.* It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(3) *Contract Clause.* The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in each and every contract and solicitation therefor.

#### **8-105 PROHIBITION AGAINST CONTINGENT FEES**

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a DCTA contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

#### **8-106 ORGANIZATIONAL CONFLICT OF INTEREST**

An organizational conflict of interest occurs when any of the following circumstances arise:

- (1) Lack of impartiality or impaired objectivity. When a contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to DCTA due to other activities, relationships, contracts, or circumstances.
- (2) Unequal access to information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- (3) Biased ground rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

#### **8-107 CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

It shall be unethical for a DCTA officer who is participating directly or indirectly in the DCTA procurement process to be the employee of any person or firm competing for a contract with DCTA. It shall also be unethical for a DCTA officer who is participating directly or indirectly in DCTA's procurement process to become an employee of any person or firm as a result of a firm being awarded a contract with DCTA.

#### **8-108 USE OF CONFIDENTIAL INFORMATION**

It shall be unethical for any officer or former officer to knowingly use confidential

information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

**8-109            SANCTIONS**

(1) *Employees.* The Chief Executive Officer may impose any one or more of the following sanctions on a DCTA employee for violations of the ethical standards in this Article:

- (a) oral or written warnings or reprimands;
- (b) suspension with or without pay for specified periods of time; or
- (c) termination of employment.

(2) *Non-employees.* The Board of Directors may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:

- (a) written warnings or reprimands;
- (b) termination of contracts.

**8-110            RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS**

(1) *General Provisions.* The value of anything transferred or received in breach of the ethical standards of this Policy by an employee or a non-DCTA officer may be recovered from both a DCTA officer and a non-DCTA officer.

(2) *Recovery of Kickbacks by DCTA.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by DCTA and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

Record of Actions:

Adopted: January 22, 2004  
Revised: September 23, 2004  
Revised: September 21, 2006  
Revised: July 2011  
Revised: July 2012  
Revised: June 2013  
Revised; November 2014  
Revised: November 2017  
Revised February 2019  
Revised: April 2019  
Revised: February 2020

Procurement Procedures Manual submitted for approval:

  
\_\_\_\_\_  
Director of Procurement      1/29/20  
Date

Procurement Procedures Manual reviewed/forwarded for approval:

  
\_\_\_\_\_  
CFO      1-29-20  
Date

Procurement Procedures Manual approved:

  
\_\_\_\_\_  
CEO      1-30-20  
Date

# **EXHIBIT 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 Procurement. 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.

### **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, 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 DCTA staff and Board of Directors.
- h) Maintains master contract files.
- i) Attends, as required, project progress meetings between contractor and DCTA 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 DCTA'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.

# APPENDIX

Form A:	Sole Source Justification and Approval
Form B:	Federally Required Third Party Clauses
Form C:	Independent Cost Estimate
Form D:	Cost Analysis
Form E:	Price Analysis
Form F:	Rolling Stock
Form G:	Solicitation Checklist

## Sole Source Justification and Approval Form

*Sole source purchases are not permitted except when clearly and thoroughly justified.*

1. Estimated contract amount: \$
2. Grant Funded: \_\_\_\_\_ Funding Source: FTA \_\_\_\_\_, TxDot \_\_\_\_\_, Other: \_\_\_\_\_
3. Recommended supplier name, address, and contact information:
4. Description of requested items or services and their purpose(s):
5. Reason(s) for requesting a sole source purchase:
  - Original manufacturer or provider; no other local distributors exist.
  - Only local distributor for the original manufacturer or provider.
  - Parts or equipment not interchangeable with similar parts of another manufacturer.
  - Only known item or service matching the requested needs or performing the intended task.
  - Sole provider of a licensed or patented good or service.
  - Sole provider of items compatible with existing equipment, inventory, systems, programs or services.
  - Sole provider of goods or services established as standard (Please provide evidence of such a standard).
  - Sole provider of factory-authorized warranty service.
  - Used item representing good value and advantage.
  - None of the above applies (Please attach a detailed explanation and justification for this sole source request).
6. Explain why the product or service requested is the only one that can satisfy your requirements, as well as why alternatives are unacceptable. Be specific with regard to specifications. Attach additional pages if necessary.

REQUESTED BY: _____	DEPARTMENT : _____
PREPARED BY : _____	DATE : _____

I hereby certify that, to the best of my knowledge, the above justification is accurate and request that a sole source be approved for the procurement of the above requested items or services.

VP SIGNATURE: \_\_\_\_\_

**RESERVED FOR PURCHASING DEPARTMENT ONLY**

REQUISITION NUMBER: _____	SIGNATURE: _____
<input type="checkbox"/> APPROVED <input type="checkbox"/> NOT APPROVED – Reason for denial: _____	NAME: _____ DATE : _____

**Federally Required Third Party Clauses**

**Refer to most current Federal Transit Administration (FTA) Circular 4220.1F available on FTA  
webpage**



**Independent Cost Estimate (ICE) Form**

(Submitted to procurement prior to purchase or with scope of work/specifications for applicable budgeted items exceeding \$250,000).

Per FTA 4220.1F, an Independent Cost Estimate (ICE) must be performed for purchases exceeding \$250,000. An ICE can be completed using published list prices, past pricing, comparable purchases from other agencies, or independent third-party estimates. For more complex projects, an ICE can be completed by independent architect or engineer that will provide estimated hours, direct and indirect labor costs, and estimated profit or fee for a particular project.

*NOTE: A vendor who provides an ICE cannot be awarded the purchase.*

**Project Name:** \_\_\_\_\_

**Description of Goods / Service:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**Method of Obtaining Estimate** (check appropriate section and attach supporting documentation):

- \_\_\_ Published List Price:
- \_\_\_ Past Pricing (date): \_\_\_\_\_
- \_\_\_ Comparable Purchase by Other Agencies
- \_\_\_ Engineering or Technical Estimate
- \_\_\_ Independent Third-Party Estimate
- \_\_\_ Other (specify): \_\_\_\_\_

Through the method(s) statement above, it has been determined that the estimated total cost of the goods/services is

\$ \_\_\_\_\_

**Prepared by:** \_\_\_\_\_

**Date Prepared:** \_\_\_\_\_



**Cost Analysis Form**

Per FTA 4220.1F, a cost or price analysis must be performed with every procurement action over the simplified acquisition threshold, including contract modifications.

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
A. PURCHASED PARTS						
B. SUBCONTRACTED ITEMS						
C. OTHER – (1) RAW MATERIAL (2) 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						

FORM D

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

## **ANALYSIS GUIDELINES**

### **1. DIRECT MATERIAL**

- A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.)
- B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors
- C. Other:
  - 1. Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.
  - 2. Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

### **2. MATERIAL OVERHEAD**

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6)

### **3. DIRECT LABOR**

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

### **4. LABOR OVERHEAD**

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available.

### **5. OTHER DIRECT COSTS**

- A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.
- B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.
- C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.
- D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

**6. GENERAL AND ADMINISTRATIVE EXPENSE**

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

**7. ROYALTIES**

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties

**8. SUBTOTAL ESTIMATED COST**

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

**9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY**

Analyze the offerors' supporting calculations and compare to known standards.

**10. SUBTOTAL ESTIMATED COST**

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range.

**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**



**Price Analysis Form**

Per FTA 4220.1F, a cost or price analysis must be performed with every procurement action over the simplified acquisition threshold, including contract modifications.

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 indicates 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.

**Purchase Order / Contract Number:** \_\_\_\_\_

**Description of Goods / Service:** \_\_\_\_\_

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

**The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis (check appropriate section):**

***Attach supporting documentation to support conclusions drawn and explain factors influencing any differences found)***

\_\_\_ Comparison with competing suppliers’ prices or catalog pricing for the same item.

\_\_\_ Comparison of proposed pricing with in-house estimate for the same item.

\_\_\_ 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

\_\_\_ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole.

\_\_\_ Other (specify): \_\_\_\_\_

Prepared by: \_\_\_\_\_

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



## Pre-Award and Post-Delivery Review Checklist

**Contract Number:** \_\_\_\_\_

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

### **Pre-Award Review** (Before signing a contract with a supplier):

Compliant with FTA Pre-Award Requirements

#### Buy America Certification

- \_\_\_\_ Review and Verify 65 Percent Domestic Content for FY 2019
- \_\_\_\_ Review and Verify 70 Percent Domestic Content for FY 2020 and Beyond
- \_\_\_\_ Review and Verify Proposed U.S. Final Assembly Location, Operations, and Total Cost
- \_\_\_\_ Complete a Pre-Award Buy America Compliance Certification

#### Purchaser's Requirements Certification

- \_\_\_\_ Check Bid Specification Compliance with Solicitation Specifications
- \_\_\_\_ Complete Manufacturer Capability Study
- \_\_\_\_ Complete a Pre-Award Purchaser's Requirements Certification

#### FMVSS - Compliant

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

### **Post-Delivery Review** (Before using the vehicles in transit service):

Compliant with FTA Post-Delivery Requirements

#### Buy America Certification

- \_\_\_\_ Review and Verify 65 Percent Domestic Content for FY 2019
- \_\_\_\_ Review and Verify 70 Percent Domestic Content for FY 2020 and Beyond
- \_\_\_\_ Review and Verify Actual U.S. Final Assembly Location, Operations, and Total Cost
- \_\_\_\_ Complete a Post-Delivery Buy America Compliance Certification

#### Purchaser's Requirements Certification

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

## Solicitation File Checklist

GENERAL CONTRACT INFORMATION				
CONTRACT NUMBER				
CONTRACT TITLE				
SOLICITATION METHOD / RATIONALE				
VENDOR NAME				
VENDOR NUMBER / TAX ID				
CONTRACT VALUE				
CONTRACT DETAILS				
Contract Terms	Award / Board Date	Begin / NTP Date	End Date	Extensions
Contract Type	<input type="checkbox"/> Goods and Services <input type="checkbox"/> Construction <input type="checkbox"/> Consulting <input type="checkbox"/> Rolling Stock <input type="checkbox"/> Professional Services			
Funding	<input type="checkbox"/> Federal <input type="checkbox"/> Non Federal <input type="checkbox"/> State <input type="checkbox"/> Accounts Receivable			
Fund Source				
DBE Goal %				
DBE Goal \$				
Department Owner / Contact				
Procurement Contact				
PURCHASE ORDER DETAILS				
PO Number	Issue Date	PO Amount		
FILE FOLDER CHECKLIST				
DOCUMENTS	TAB NUMBER	INCLUDED	COMMENTS	
Independent Cost Estimate (federal and sole sources only)		<input type="checkbox"/>		
Draft Documents / Schedule of Events		<input type="checkbox"/>		
DBE Requirements / Documentation (federal only)		<input type="checkbox"/>		
Risk Mgmt Requirements / Documentation		<input type="checkbox"/>		
Required Third Party Clauses (federal only)		<input type="checkbox"/>		
Correspondence / Approval Review		<input type="checkbox"/>		
Original Solicitation		<input type="checkbox"/>	Due Date/Time:	
Supplier Notification List		<input type="checkbox"/>	No. of Suppliers Notified:	
Affidavits of Advertising & Tearsheets		<input type="checkbox"/>	Advertisement Dates:	
Pre-Bid / Proposal Conference		<input type="checkbox"/>		
Addendum(s)		<input type="checkbox"/>		
Question and Answers		<input type="checkbox"/>		
Bid Tab / Proposal Register		<input type="checkbox"/>		
Bid Bonds, if applicable		<input type="checkbox"/>		
Evaluation Documentation / Scoresheets		<input type="checkbox"/>	No. of Submittals Received:	
Evaluation Team Approval / No-Conflict Forms		<input type="checkbox"/>		
Oral Discussions / Interviews / Presentations (if applicable)		<input type="checkbox"/>		
Final Proposal Revision / Price Proposal Eval. (if applicable)		<input type="checkbox"/>		
Award Recommendation		<input type="checkbox"/>		
Cost or Price Analysis (if federal and over \$250k)		<input type="checkbox"/>		
Determination of Responsibility (if over \$10K)		<input type="checkbox"/>		
SAMS Verification / Foreign Terrorist Check		<input type="checkbox"/>		
Successful Bid(s) or Proposal(s)		<input type="checkbox"/>		
DBE Commitment Forms (if applicable)		<input type="checkbox"/>		
Unsuccessful Bids / Proposals / Debrief / Notices (maintained in procurement history folder)		<input type="checkbox"/>		
Findings and Determinations		<input type="checkbox"/>		
Cancellation		<input type="checkbox"/>		
Purchase Order		<input type="checkbox"/>		