



Procurement Policy and Procedures Manual

November 2018



RTA

**REGIONAL
TRANSIT AUTHORITY
OF SOUTHEAST MICHIGAN**

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Approved by: 
Title: Chief Operating Officer
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Background

This Procurement Policy and Procedures Manual (“Procurement Manual”, establishes the overarching policy and broad procurement framework for the Regional Transit Authority of Southeast Michigan (RTA) as it advances the mission of the agency. Both the Policy and Procedures Manual have been developed in accordance with the latest Federal and State rules, regulations and requirements.

The purpose of the Policy and Procedures Manual is to provide direction for day-to-day procurement activities and contractual conduct in accordance with all applicable laws, regulations, RTA policies, and sound business practices.

In order to do this, RTA will abide by the following provisions which are outlined in its enabling statute:

RTA Act Provisions (MCL 124.546(15))

- A. The RTA may enter into lease or installment purchases for periods not exceeding the useful life of the items purchased unless otherwise prohibited by law.
- B. In all purchases made by the RTA, if consistent with applicable federal and state law, and this Policy, preference shall be given first to products manufactured or services offered by firms based in the authority’s public transit region, including, but not limited to, the cities and counties in a public transit region, and second to firms based in this state.
- C. The RTA shall actively solicit lists of potential bidders for authority contracts from each RTA member jurisdiction.

PART A – POLICY

1. APPLICABILITY AND GOVERNANCE

The RTA Procurement Manual, approved by the RTA Board (“Board”), establishes the broad framework for the RTA to reference during its day-to-day procurement operations.

If the RTA applies for and receives State of Michigan or federal funds that require the RTA to comply with procurement or contracting requirements that are in conflict with the RTA Act or the RTA’s Procurement Manual, the state or federal requirements shall take precedence.

This Procurement Manual replaces the RTA’s 2016 Procurement Policy, Addendum, and Procedures and will only apply to contracts solicited after November 2018 (the “Effective Date”).

The Procurement Manual sets forth the standards for processing all contracts unless specifically designated otherwise. The Procurement Manual will ensure that goods (e.g., equipment, materials, supplies, etc.) and services are obtained or disposed using timely, efficient, and economical methods that adhere to the principles of good administrative practices and sound business judgement.

The Policy section (PART A) of this Procurement Manual may only be revised by official Board action.

2. CONTRACTING AUTHORITY

Authority and responsibility to enter into contracts for RTA is vested in the General Manager, the Chairman of the Board, or their designees as appropriately determined. The responsibilities described herein remain with the enumerated RTA job functions regardless of department.

Any procurement authority delegated to persons or departments will also vest in the General Manager, the Chairman of the Board, and the Board.

The following matrix specifies who may authorize and execute contracts.

2.1 Contract Approval Requirements

The following matrix specifies who may authorize and execute contracts:

Board Action Not Required for Items (A) – (E)		Summary of Amount/Type of Contract
A.	The COO may authorize and execute contracts up to a maximum of \$10,000.	Up to \$10,000
B.	The General Manager or designee, with the approval of the Chairman or designee, may authorize and execute contracts in response to an Emergency or Public Exigency.	Contracts in response to an emergency or Public Exigency
C.	The General Manager or designee, with the approval of the Chairman or designee, may authorize and execute sole source contracts up to \$50,000; contracts for professional services up to \$50,000; and contracts competed by RFP up to \$50,000.	Sole Source Contracts up to \$50,000
		Professional Services contracts up to \$50,000
		Contracts Competed by RFP up to \$50,000
D.	The General Manager or designee, with the approval of the Chairman or designee, following consultation with General Counsel, may authorize all non-disclosure agreements.	Non-Disclosure Agreements
E.	The General Manager or designee, with the approval of the Chairman or designee, following consultation with General Counsel, may authorize and execute all contracts for professional consultant services donated to the RTA.	Donated Professional Services
Board Action Required for (F)		Summary of Amount/Type of Contract
F.	Following Board Approval, the Chairman or designee may execute all disadvantageous contracts; sole source contracts over \$50,000; professional services contracts over \$50,000; contracts competed by RFP over \$50,000; and contracts competed and not otherwise addressed in (C) or (F) over \$50,000.	Disadvantageous Contracts
		Sole Source Contracts over a \$50,000
		Professional Services contracts over \$50,000
		Contracts competed by RFP over \$50,000
		Contracts competed and not addressed in (C) or (F) over \$50,000

3. GENERAL PROCUREMENT STANDARDS

3.1 Contract Oversight

The RTA General Manager will appoint a staff member to serve as the Procurement Administrator. The Procurement Administrator will have the authority for carrying out RTA's procurement activities.

The Procurement Administrator will provide each Board member with a copy of each Invitation for Bid ("IFB") and Request for Proposal and an opportunity to provide informal input prior to the terms of an invitation or request being finalized. Board members shall maintain the confidentiality of the proposed terms of an Invitation for Bid or a Request for Proposal, until said terms are made public and, unless known to the public, each Board member shall maintain the confidentiality of the existence of an Invitation for Bid or a Request for Proposal until such Invitation or Request is made public.

The Procurement Administrator will maintain a contract administration system that ensures that Vendors (i.e., those providing goods and services) perform in accordance with the terms, conditions and specifications of their contracts or purchase orders. Oversight includes conflict dispute resolution (see section B.3.4); monitoring the contractor's on-time delivery of goods or services as detailed in any contractual milestones; and analyzing the cause of cost overruns, scope changes, or slippages in delivery schedules. Thorough documentation is required of the Procurement Administrator to ensure full contractor compliance.

3.2 Written Standards of Conduct

Members of the Board and all RTA employees will comply with the RTA Code of Conduct and Conflict of Interest Policy, the Procurement Manual, and all statutory and regulatory requirements, including without limitation, the applicable U.S. Department of Transportation regulations and FTA Circulars. Violators are subject to the penalties prescribed in the RTA Code of Conduct and Conflict of Interest Policy.

Furthermore, the Board shall comply with code of conduct discussed in this policy governing the performance of employees, officers, agents, and Board members related to the solicitation, award, and administration of contracts, in compliance with all applicable Federal and State of Michigan laws, rules and regulations, including, but not limited to, Federal Transit laws contained in 49 U.S.C. Chapter 53, Federal Transit Authority ("FTA") regulations including FTA Circular 4220.1F, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs (49 CFR Part 26), other Federal laws, rules and regulations that contain requirements applicable to FTA recipients and the FTA assisted procurements, the Michigan Regional Transit Authority Act ("RTA Act") (Act 387, Michigan Public Acts, 2012, MCL 124.541 et seq.), and other State of Michigan laws, rules and regulations applicable to RTA procurements, as amended from time to time.

3.3 Unnecessary or Duplicative Items

RTA procedures will avoid the acquisition of unnecessary property and services, including duplicative items and quantities or options it does not intend to use or whose use is unlikely. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will

be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

3.4 Contracting with Responsible Vendors

RTA shall make purchases from and award contracts only to responsible Vendors/Contractors, i.e., those possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. “Vendor” and/or “Contractor” means any individual or legal entity that (a) directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, an RTA contract, or a subcontract under an RTA contract or (b) conducts business, or reasonably may be expected to conduct business, with RTA as an agent or representative of another contractor.

3.5 Maintenance of Written Procurement History

RTA shall maintain written records detailing the history of procurements in a manner consistent with the size, complexity, and cost of the Contract. At a minimum, these records shall include the following:

- A. The rationale for the method of procurement;
- B. The reason(s) for the selection of the contract type;
- C. The reason(s) for Contractor selection or rejection; and
- D. The basis for the contract price.

3.6 Time and Material Contracts

A Time and Material (T&M) Contract, or change order, is one in which a clear scope cannot be defined, due to unknown conditions or circumstances affecting the work. Since such contracts provide no incentive for the Contractor to work efficiently or in a cost-effective manner, their use is restricted to situations in which no other type of contract is suitable.

Before entering into such a contract, the Procurement Administrator must prepare a written justification/documented determination that no other type of contract is feasible. Such contracts will specify a ceiling price (a limitation of funding) that the Contractor shall not exceed except at its own risk, to control cost liability. The official contract file must also include documented price negotiations, which is to formalize the negotiated price, by change order to the time and material award. Every effort should be made to limit the scope of a Time and Materials Contract or change order until another type of contract or change order can be established.

3.7 Protests and Contract Dispute Resolution

The RTA Board is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

The RTA shall maintain written procedures that are consistent with all federal and State of Michigan laws to consider and resolve protests relating to solicitations and shall comply with FTA requirements regarding notice of protests and notification of a protestor’s right to appeal to the FTA as set forth in C4220.1F. The RTA shall also

maintain written procedures that are compliant with all federal and State of Michigan laws and FTA requirements for processing and resolving contract claims and disputes in a fair and equitable manner. RTA's Protests and Contract Dispute Resolution Procedures are set out in Part B, Section 1.2 of this Manual.

3.8 Severability and Legal Compliance

If any provision of the Procurement Manual is held unconstitutional or otherwise invalid, the remaining parts thereof will remain in full force and effect. If any provision of the Procurement Manual or subsequent procedures or application thereof conflicts with any State or Federal law, rule or regulation, said law, rule or regulation will control.

4. FULL AND OPEN COMPETITION

It is the policy of the Board that procurement transactions over \$5,000 be conducted in a manner intended to maximize full and open competition. RTA and Board executives will only make awards to responsive offers from responsible offerors. A responsive offer is one that complies with all material requirements of the solicitation. A responsible offeror is one possessing the technical, physical, financial, and ethical capacity to successfully perform a specific contract.

4.1 Restrictions on Competition

All procurement transactions will be conducted, to the greatest extent practicable, in a manner providing full and open competition, without providing an unfair competitive advantage to any potential vendor. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. Placing unreasonable requirements on firms in order for them to qualify to do business;
- B. Requiring unnecessary experience and excessive bonding;
- C. Noncompetitive pricing practices between firms or between affiliated companies;
- D. Noncompetitive contracts to consultants that are on retainer contracts;
- E. Organizational conflicts of interest;
- F. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- G. Any arbitrary action in the procurement process.

4.2 Geographic Preferences

Procurement transactions will be conducted in a manner that prohibits the use of in-state or local geographical preferences in the solicitation and evaluation of bids or proposals, except in those cases where applicable statutes or regulations expressly mandate or permit geographic preference. This does not preempt State or local licensing laws. However, geographic location may be a selection criterion in procurements for state or locally funded services where no federal dollars are proposed to be used, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the Contract.

4.3 Standards of Conduct

Personal Conflicts of Interest

No employee, officer, agent, or Board member, or their immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals may participate in the selection, award, or administration of a contract funded by FTA if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those individuals previously listed has a financial or other interest in the firm selected for award.

Gifts

RTA's officers, employees, agents, or Board members may neither solicit nor accept gifts, gratuities, favors or anything of monetary value from Contractors, potential Contractors, or parties to sub-agreements which would cause a reasonable person to question the individual's impartiality in the matter.

5. PROCUREMENT PRACTICES

5.1 Acceptable Non-Competitively Bid Procurements

The RTA is not required to use competitive bidding when acquiring proprietary services, equipment, or information available from a single source, such as a software license agreement.

Competitive bids are not required if any of the following apply.

- A. An emergency directly and immediately affecting service or public health, safety, or welfare requires the immediate procurement of supplies, materials, equipment, or services to mitigate an imminent threat to public health, safety, or welfare, as determined by the RTA.
- B. Procurement of goods or services is for emergency repair or construction caused by unforeseen circumstances when the repair or construction is necessary to protect life or property.
- C. Procurement of goods or services is in response to a declared state of emergency or state of disaster under the Michigan Emergency Management Act, 1976 PA 390, MCL 30.401 to 30.421.
- D. Procurement of goods or services is in response to a declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.
- E. Procurement of goods or services is in response to a declared state of energy emergency under 1982 PA 191, MCL 10.81 to 10.89.
- F. Procurement of goods or services is under a cooperative purchasing agreement with the federal government, the State of Michigan, or another public entity for the purchase of necessary goods and services at fair and reasonable prices using a competitive procurement method for RTA operations.
- G. Competitive bids are not required if the value of the procurement is less than \$25,000.00, and the Board has established procedures to ensure that goods or services with a value of less than \$25,000.00 are purchased at fair and reasonable

prices, including a requirement that for purchases and sales of \$25,000.00 or less, but over \$5,000.00, written price quotations from at least three (3) qualified and responsible vendors shall be obtained or a memorandum shall be kept on file showing that fewer than three (3) qualified and responsible vendors exist in the market area within which it is practicable to obtain quotations. Procurement of goods or services with a value not exceeding \$5,000.00 may be negotiated with or without using competitive bidding.

5.2 Disadvantaged Business Enterprise (“DBE”) Policy

It is the policy of the RTA to actively encourage Disadvantaged Business Enterprises (“DBE”) to participate in RTA’s procurement process, to create a level playing field in which DBE’s can compete fairly for contracts and to ensure nondiscrimination in the award and administration of contracts. In order to accomplish this, RTA has established a DBE Participation Goal and has an adopted DBE Program.

To encourage DBE Participation the RTA will hold pre-bid conferences on all proposed contracts over \$100,000. The RTA will invite DBEs certified by the Michigan Unified Certification Program (MUCP) to attend the pre-bid/proposal meetings where they can network with prime contractors, and request clarification on any questions that they may have concerning future RTA opportunities.

The RTA also attends the Michigan Department of Transportation’s DBE conference and presents upcoming projects to DBE vendors, as well as networks with DBEs interested in bidding on RTA projects. RTA staff also attend Michigan Unified Certification Program (MUCP) quarterly meetings. The meetings are attended by DBE certifying agencies and other FTA covered entities in the State of Michigan. During these meetings any changes to the FTA’s DBE program are discussed, along with any ongoing DBE program related issues entities are experiencing.

For more information on the RTA’s DBE Program and DBE goal please visit www.rtamichigan.org/doingbusiness.

6. BONDING REQUIREMENTS

6.1 Construction

RTA shall specify a bonding policy in compliance with FTA requirements for construction or facility improvement contracts which adequately protects the Board and FTA interests and follows all federal and State of Michigan laws, rules and regulations.

6.2 Non-Construction

For non-construction contracts, bonding requirements are discouraged except where applicable law or regulations provides for such bonding or RTA determines that such a requirement is necessary as part of a risk management plan for a project.

7. CONTRACT PROVISIONS

7.1 Sound and Complete Agreement

All contracts shall include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project. At a minimum, these include a well-defined statement of work or specification, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws and regulations.

7.2 Remedies for Breach

All Contracts in excess of the small purchase limit as defined herein shall include contractual provisions that allow for administrative or legal remedies in instances where Contractors violate or breach contract terms.

7.3 Termination

Termination for cause and for convenience provisions shall be included in all contracts, including the manner by which termination will be affected and the basis on which a settlement will be accomplished.

7.4 Buy America

Buy America statute applies to:

- A. All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds;
- B. Contractors and subcontractors if the contract or subcontract are more than \$150,000, including labor and options;
- C. Purchases made using an intergovernmental agreement and jointly purchased manufactured products; and
- D. Purchases of used items.

RTA must include Buy America provision in contracts exceeding \$150,000 that requires both parties to provide signed Buy America certifications.

PART B – PROCEDURES

The following procedures have been developed to guide RTA staff in the execution of and compliance with the Board of Director’s Procurement Policy outlined in Part A of this document.

1. GENERAL PROCUREMENT STANDARDS

1.1 Contracting with Responsible Vendors

- 1.1.1 RTA shall make purchases from and award contracts only to responsible Contractors, i.e., those possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract.
- 1.1.2 In the absence of information clearly indicating that the prospective Contractor is responsible, RTA shall make a determination of nonresponsibility.
- 1.1.3 The Procurement Administrator shall consider the following factors when making a responsibility determination:
 - A. Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A);
 - B. Debarment and Suspension. Is neither debarred nor suspended from federal programs under U.S. Department of Transportation (DOT) regulations, “Non-procurement Suspension and Debarment”;
 - C. Affirmative Action and DBE. Is in compliance with the Common Grant Rule’s Affirmative Action and DOT’s Disadvantaged Business Enterprise requirements;
 - D. Public Policy. Is in compliance with the public policies of the federal government, as required by 49 U.S.C. Section 5325(j)(2)(B);
 - E. Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D);
 - F. Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations;
 - G. Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D);
 - H. Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
 - I. Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitment; and
 - J. Performance Record. Is able to provide a satisfactory current and past performance record.

1.1.4 The Procurement Administrator shall determine whether the price bid or offer by a prospective Contractor is so low as to appear unreasonable or unrealistic, and in such case, determine the prospective Contractor to be nonresponsible.

The RTA shall not award a contract to a prospective Contractor if:

- The Contractor is debarred, suspended or deemed ineligible for contracting by RTA;
- For federally funded contracts, the Contractor is suspended, ineligible, excluded, or voluntarily excluded or debarred from participation in federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1 Part 9.4.

1.1.5 The Procurement Administrator shall ensure to the best of his/her knowledge and belief that none of a Contractor’s principals (i.e., officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibility related to a covered transaction), affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, excluded, or voluntarily excluded from participation in federally assisted transactions or procurements. The Procurement Administrator shall review SAM before entering into any third-party contract expected to equal or exceed \$25,000. The Procurement Administrator shall conduct a similar review process for its principals as it does for its Contractors and subrecipients regarding suspension and debarment.

1.1.6 The Procurement Administrator may require the prospective Contractor to promptly provide acceptable evidence of the prospective Contractor’s ability to obtain resources. Acceptable evidence of the prospective Contractor’s ability to obtain resources shall consist of a commitment or explicit arrangement that will be in existence prior to the time of contract award to rent, purchase, or otherwise acquire the needed facilities, equipment, personnel, or other resources.

1.1.7 The Procurement Administrator may presume a prospective Contractor that is or recently has been seriously deficient in contract performance to be nonresponsible. The Procurement Administrator may determine the Contractor to be responsible if the circumstances of the prior deficiency were properly beyond the Contractor’s control or if the Contractor has taken appropriate corrective action.

1.1.8 The Procurement Administrator shall consider the past performance and integrity of a Contractor’s affiliate(s) and when the affiliate(s) may adversely affect the prospective Contractor’s responsibility.

1.1.9 If the determination of a prospective Subcontractor’s responsibility may affect the determination of a prospective prime Contractor’s responsibility:

- The Procurement Administrator should require the prospective Contractor to provide written evidence of a proposed Subcontractor’s responsibility; and

- When deemed in the interests of the RTA, the Procurement Administrator may Independently determine a prospective Subcontractor’s responsibility, using the standards and requirements for Contractor responsibility set forth in the RTA’s Procurement Policy.

1.1.10 Obtaining Information for Determination of Responsibility.

- The Procurement Administrator shall obtain information regarding the responsibility of a prospective Contractor who is the apparent low Bidder or whose offer is in the competitive range.
- If the prospective contractor fails to supply the information requested in the time allotted, the Procurement Administrator shall make the determination of responsibility or nonresponsibility based upon available information. If the available information is insufficient to make a determination of responsibility, the Procurement Administrator shall determine the prospective Contractor to be nonresponsible.
- The Procurement Administrator shall place the Staff Procurement Summary Sheet (SS1), which includes a determination of contractor responsibility, in the file. Prior to contract award, the completed SS1 will constitute documentation of the determination of Contractor responsibility.
- RTA personnel who become aware of circumstances casting doubt on a Contractor’s ability to perform a contract successfully shall promptly inform the Procurement Administrator and furnish the relevant information in writing.

1.1.11 In the event that the RTA becomes aware, after the award of the contract, that an excluded party is participating in a covered transaction, the Procurement Administrator will promptly inform FTA in writing of this information. RTA may continue any covered transaction in existence at the time a party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or may consider termination. The RTA will not renew or extend the covered transaction (other than through a no-cost time extension) with the excluded party.

1.1.12 When an offer, with respect to which an award would otherwise be made is rejected because the prospective Contractor is found to be non-responsive, the Procurement Administrator shall make, sign, and place in the contract file a determination of non-responsiveness, which shall state the basis for the determination.

1.2 Protests and Contract Dispute Resolution

This Section addresses the process for Bid Protests (“Protest”). Any interested party (“Interested Party”) shall have the right to file and have a Protest considered and resolved administratively by the RTA. An Interested Party, as used in this Section, means an actual bidder or proposer, or a potential bidder or proposer, whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. The Bid Protest Procedures set forth herein apply to IFBs and RFPs. The filing of Bid Protests will not unnecessarily delay the procurement process.

Written Submission

An interested party wishing to protest a matter involving a proposed procurement or contract award shall file with the RTA's Procurement Administrator a written Protest. The Protest should include, at minimum, the following:

- The name and address of the Interested Party and its relationship to the procurement sufficient to establish that the protest is being filed by an Interested Party;
- Identity of the contact person for the protestor, including name, title, mailing address, telephone number, and fax and e-mail addresses. If the contact person is a third party representing the protestor, the same information must be provided, plus a statement defining the relationship between the protestor and the third party;
- Solicitation, proposal, or contract number, or other identifying number provided by RTA;
- Statement of the nature and grounds for the Protest, including the provision(s) of the solicitation and, if applicable, the Federal or State law or regulation or RTA's Procurement Manual upon which the Protest is based;
- Statement of the specific relief requested; and
- Any documents relevant to the Protest that the protesting party desires RTA to consider;
- A notarized affirmation by the protestor (if an individual) or by an owner or officer of the protestor (if not an individual) as to the truth and accuracy of the statements made in the protest submittal.

Deadline for Filing Protest

- A. Protests Regarding Solicitation. Any Protest regarding a solicitation by RTA must be filed no later than ten (10) business days before the opening of Bids. Any Protest filed after that date which raises issues regarding the solicitation will not be considered.
- B. Protests Regarding Bid Evaluation. Any Protest regarding the evaluation of Bids by RTA must be filed no later than ten (10) business days after the opening of Bids. Any Protest filed after that date which raises issues regarding the Bid evaluation will not be considered, unless the issue arose after the initial ten (10) business day period and before contract execution.
- C. Protests Regarding Award of Contract. Any Protest regarding the award of a contract must be filed no later than ten (10) business days after the date of the award. Any Protest regarding the award of the contract filed after that date will not be considered.

Procedures for Protests Regarding Solicitation

This type of Protest includes any claim that the Bid solicitation contained unduly restrictive, exclusionary, or discriminatory specifications, any challenge to the basis for making an award, or any claim that the solicitation documents or the solicitation process violated applicable Federal or State law or regulation, or that RTA failed to follow its Procurement Manual.

- A. Upon receipt of a timely filed protest regarding the solicitation, RTA will postpone the opening of Bids until resolution of the Protest, unless otherwise authorized to proceed under Section 1.2.6.E below. If Bid opening is postponed, no additional Bids will be accepted during the period of postponement.
- B. If the Protest involves a claim of unduly restrictive, exclusionary, or discriminatory specifications, RTA will, in evaluating the Protest, consider both the specific need for the feature or item challenged and any effects on competition of including the specification regarding that feature or item.

Procedures for Protests Regarding Bid Evaluation

This type of Protest includes any challenge to determinations by RTA of the responsiveness of a Bid or the responsibility of a Bidder, or any claim that the evaluation of Bids violated Federal or State law or regulation or RTA's Procurement Manual.

- A. Protests may only come from vendors who submitted a valid proposal.
- B. Upon receipt of a timely filed Protest regarding the evaluation of Bids, RTA will determine if the protestor has established that there is substantial evidence regarding the no-responsiveness of a Bid or the non-responsibility of a Bidder or doubt regarding RTA's compliance with Federal or State law or RTA's Procurement Manual.
- C. If the protestor submits sufficient evidence supporting its Protest to show that the Protest is not vexatious or frivolous, RTA will suspend its evaluation of all Bids submitted until resolution of the Protest, unless authorized to proceed under Section 1.2.6.E below.

Procedures for Protests After Award

This type of Protest will only be considered by RTA if the protestor is able to demonstrate that the Bidder who was awarded the contract fraudulently represented itself as a responsible Bidder or that RTA violated Federal or State law or RTA's Procurement Manual in awarding the contract. Upon receipt of a timely filed Protest regarding the award of a contract, RTA will issue a stop work order, if it deems necessary, until the resolution of the Protest.

All Protests

- A. The RTA's Procurement Administrator will notify the protestor upon timely receipt of a Protest and may, where appropriate, request additional information from the protestor. RTA may, at its discretion, meet with the protestor to review the matters raised by the Protest.
- B. Notice of a Protest and the basis therefore will be given to all Bidders or proposers who have a reasonable prospect of receiving an award.
- C. Where a timely Protest has been filed prior to opening of Bids and unless the Protest is resolved by RTA prior thereto, the date for receipt of Bids will be extended to accommodate the time needed for resolving the Protest and instituting any necessary remedial measures, unless one of the circumstances set forth in Section 1.2.6.E below exists.
- D. When a Protest against the making of an award is received and the award will be withheld pending disposition of the Protest, the Bidders whose offers might be eligible for award should be informed of the Protest. If appropriate, those Bidders should be requested, before expiration of the time for acceptance their offer, to extend the time for acceptance.
- E. RTA may suspend the procurement process upon receipt of a bona fide Protest. However, RTA reserves the right, notwithstanding the pendency of a Protest, to proceed with the appropriate action in the procurement process or under the contract in the following circumstances:
 - i. Where the item to be procured is urgently required;
 - ii. Where RTA determines that the Protest is vexatious or frivolous; or
 - iii. Where delivery or performance will be unduly delayed, or other undue harm will occur by failure to make the award promptly.
- F. The RTA's Procurement Administrator shall, within ten (10) working days of receipt of a Protest, issue a written decision on the Protest based on the information provided by the protestor, the results of any meetings with the protestor, and RTA's own investigation; this time period may be extended if necessary to reach a decision. The RTA's Procurement Administrator's decision will respond to each substantive issue raised in the Protest. The Procurement Administrator's decision will be final unless it is timely appealed in writing to the RTA's General Manager as provided for in Section 1.2.6.G below.
- G. A written appeal must be received by the RTA's General Manager within five (5) working days after issuance of a decision by the RTA's Procurement Administrator. The appeal must set forth: (i) the factual basis of the appeal, including any new data or information which was not previously known; (ii) specifics regarding an allegation that the RTA failed to follow its Procurement Manual, including the Protests and Contract Dispute procedures, if applicable; (iii) specifics regarding an allegation that a violation of Federal or State law

or regulation has occurred, if applicable; and (iv) any other information the protestor believes is relevant. The General Manager will issue a written decision within ten (10) working days after receipt of the appeal. The General Manager's decision will be final; this time period may be extended if necessary to reach a decision. The decision of the General Manager shall be final and conclusive, except for such remedies as state or federal law or regulations may provide.

- H. "Working days" for purposes of Section 1.2.2 and 6 are all days that RTA's Administrative Office is open for business.
- I. If the RTA denies an appeal, it will inform the protestor in writing of its right to appeal the General Manager's decision to the FTA. Upon denying an appeal, RTA will lift any suspension imposed and will proceed with the procurement process of the contract.

Remedy

If a protest is upheld, in whole or in part, RTA will take appropriate action on a case-by-case basis, as it deems necessary, to correct the procurement process and protect the rights of the protestor, including re-solicitation of Bids, revised evaluation of Bids or RTA determinations, or termination of the contract.

1.3 Protests to FTA

- A. Grounds for FTA review are those set forth in the FTA Circular 4220.1F in effect at the time an appeal to the FTA is filed. Under the most recent effective version of FTA Circular 4220.1F ("Circular"), the FTA will only review those Protests that claim: (1) RTA failed to have or follow protest procedures, (2) RTA failed to review a complaint or Protest, or (3) violations of Federal law or regulation have occurred.
- B. When FTA funds are used in a project, FTA will be notified of all Protests. The Procurement Administrator will provide copies of bid protest letters and RTA's responses to the FTA and will keep FTA informed about the status of the protest. The Procurement Administrator will notify FTA of all Protest denials.
- C. A protestor must exhaust all administrative remedies with RTA before pursuing a protest with FTA. An appeal to FTA must be filed in accordance with the Circular and must be received by either FTA's Region Five officer or Headquarters office within five (5) working days of the date the protestor learned or should have learned of the General Manager's decision or other basis of appeal to the FTA. "Working days" for purposes of appeal to the FTA are all days the FTA's Region Five officer or Headquarters office are open for business.

2. FULL AND OPEN COMPETITION

2.1 Organizational Conflicts of Interest

An organizational conflict of interest exists where other activities, relationships, or contracts of a Contractor inhibit, affect or prevent the Contractor from rendering impartial assistance or advice to RTA; a Contractor's objectivity in performing the contract work is or might be otherwise impaired (e.g. a Contractor assisting with a design might have a financial interest in a product or system that could be utilized in implementing that design); or a Contractor has an unfair competitive advantage which might be gained through its involvement in writing, or reviewing the solicitation and contract documents, including the scope or specification except as part of a general industry review.

2.2 Prevention and/or Mitigation of Conflicts of Interest

Disclosure

There are a variety of ways in which conflicts of interest can be prevented, or mitigated, one of the most important being disclosure. Contracts should include the organizational conflict of interest clause, to require that offerors disclose when they believe there may be a conflict. This gives RTA the opportunity to make the determination and take the necessary action to avoid the conflict. Additionally, conflicts of interest can be avoided by thoroughly researching potential vendors, employees, and Contractors. Any connections should be investigated so as to prevent conflict. RTA's conflict of interest policy requires that employees refrain from engaging in any activity, practice or act which conflicts with, or appears in conflict with the interest of HRT, its customers, or vendors. Compliance with this policy significantly reduces the chance of a conflict of interest.

Removal/Recusal/Absention of Employee; Use of Third-Party

Once a conflict of interest has already occurred, it is still possible to avoid the consequences related to it. Removal of the RTA employee from the position causing the conflict is a mitigating action. Also, a recusal may be obtained, allowing the employee facing the conflict to abstain from participating in the procurement action causing the conflict. If a recusal is not conducive to the circumstances, a third-party may become involved to regulate between the RTA employee and the company affected. This may be necessary when an offeror submits an offer that is in some way influenced by those making the award decision. In this situation, a third-party may be brought in to make the necessary decision impartially. By implementing these methods, the consequences associated with conflicts of interest may be mitigated.

3. PROCUREMENT PROCEDURES

3.1 Independent Cost Estimate

A cost or price analysis must be performed in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the RTA must make independent estimates before receiving bids or proposals.

As part of the advance procurement planning process, and in any event prior to the advertisement or the approval of a contract change order, the RTA shall ensure that there is an independent estimate of the expected price level or value of the goods or services to

be purchased or to be changed. If the planning solicitation includes options, they should also be addressed in the estimate. The independent estimate is the RTA's estimate of the price of a proposed procurement for use in performing a cost or price analysis.

The independent estimate must be prepared without input from prospective bidders and should include the name of the estimator and the date the estimate was prepared.

The estimate should be prepared in the same format and level of detail as bidders are to use in submitting their pricing schedules and is intended to serve as an effective tool in evaluating price and cost reasonableness.

The estimator should maintain the supporting documentation used in preparing the estimate for reference as a part of the evaluation process.

Should a solicitation amendment materially affect the anticipated price, the estimate should be revised to address the changed requirement(s).

A copy of the independent estimate (and any subsequent revised estimates) should be retained in the contract file.

Depending upon the nature of the contract requirement, estimates can range from a single amount to complex estimates based on inspection of the product itself and review of such items as drawings, specifications, and prior data (such as cost data from prior procurements).

The Procurement Administrator shall hold the estimate as confidential and not disclose its contents to potential Bidders prior to the receipt of Bid.

Type of Analysis

A cost analysis must be performed for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements, unless price reasonableness can be established based on market prices. Price analysis (i.e., using catalog or market prices) may be performed for all other procurements.

3.2 Contractor Profit

Profit values will be set individually for each RFP. Profit is to be negotiated as a separate element of the price for each Contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

3.3 Cost Plus Contracts

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

3.4 Pre-Qualification Requirements

RTA Pre-Qualification Requirements must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include

enough qualified sources to ensure maximum full and open competition. Requirements must not preclude potential bidders from qualifying during the solicitation period.

Pre-qualification of bidders or products may be used when: (a) RTA wishes to procure complex services such as construction and at other instances when appropriate; or (b) RTA wishes to procure goods that require sophisticated manufacturing and/or goods with exacting performance requirements.

Only those Bidders or Proposers who are prequalified may supply the goods or services required.

The Procurement Administrator shall determine whether or not to pre-qualify bidders or products, and when doing so, the Procurement Administrator shall determine the pre-qualification standards that must be met.

3.5 Determination of Bid Method; Solicitation of Potential Bidders; Board Input;

The Procurement Administrator shall determine whether competitive bids are required or whether circumstances exist for a no-competitive bid procurement.

In the event it is determined that competitive bids are required, the Procurement Administrator shall determine the method to be used to solicit proposals (sealed bids [Invitation for Bids] or negotiated procurements [Request for Proposal]), and shall ensure that all requirements in the Procurement Manual are complied with.

The Procurement Administrator shall actively solicit lists of potential bidders for RTA contracts from each RTA member jurisdiction.

The Procurement Administrator will provide each Board member with a copy of each Invitation for Bid and/or Request for Proposal and an opportunity to provide informal input prior to the terms of an Invitation or Request being finalized. Board members shall maintain the confidentiality of the proposed terms of an Invitation for Bid or a Request for Proposal, until said terms are made public, and unless known to the public, maintain the confidentiality of the existence of an Invitation for Bid or a Request for Proposal until such Invitation or Request is made public.

3.6 Competitively Bid Procurements

RTA will conduct all procurement transactions consistent with the above-stated procurement standards through the use of those competitive procurement procedures best suited to the particular procurement, except as otherwise specifically justified.

Except as otherwise authorized or specifically justified, or required by federal or State of Michigan laws, rules or regulations, all Purchase Orders or contracts for the purchase of goods and services over \$25,000 by or on behalf of the RTA will be let by free and open Competitive Bidding.

The RTA may enter into a competitive purchasing agreement with the federal government, the State of Michigan, or other public entities for the purchase of necessary goods or services.

3.6.1 Sealed Bids (Invitation for Bids – “IFB”)

An IFB will be used if:

- A. A complete, adequate, precise, and realistic specification or purchase description is available;
- B. The award will be made on the basis of price and price-related factors;
- C. It will not be necessary to conduct discussions with the responding Vendors about their Bids;
- D. There is a reasonable expectation of receiving more than one sealed Bid; and
- E. The procurement generally lends itself to a firm fixed price contract.

RTA will ensure fair and unbiased evaluation of Bids. RTA’s procedures will guarantee that only the lowest, responsive (including DBE compliant) and responsible Bidder is recommended for award of a contract. At its discretion, the RTA may reject all bids and either rebid or cancel the bid in question.

RTA is a public body as defined by Michigan’s Freedom of Information Act (FOIA). Upon public opening, all IFB responses become public records subject to disclosure under FOIA.

3.6.2 Negotiated Procurements (Requests for Proposals – “RFP”)

A RFP will be used if the nature of the procurement does not lend itself to sealed Bidding and RTA expects that more than one source will be willing and able to submit a proposal.

RFP’s will incorporate a clear and accurate description of the technical requirements and a comprehensive scope of work for the goods or services to be procured.

RFP’s will clearly state the evaluation factors, including: Cost or price, cost or price-related factors and non-cost or non-price related technical and business management factors that will be considered in making a Contractor selection/recommendation.

For all negotiated procurements, the following process will apply to ensure fair, unbiased and consistent evaluation of all proposals.

- A. RFP released with a date selected for a Pre-Bid meeting open to the public. Pre-Bid meetings will be held for any opportunity of anticipated value over \$100,000. The purpose of the Pre-Bid meeting is to clarify any concerns bidders may have with the solicitation documents, scope of work and other details of the requirement. RTA may provide and allow for participation in a Pre-Bid meeting by way of remote access.
- B. The list of vendors that were solicited for bid and/or that attended the Pre-Bid meeting will be posted to the RTA web site along with questions and answers resulting from the meeting. The RTA will also post to the website other

questions received and answers provided during the solicitation period related to the RFP.

- C. All non-cost information included in an RFP response shall be separated in the response from cost information.
- D. All RFP's, with the exception of RFP's relating to administrative, non-operations services (e.g., accounting, IT, legal, etc.) will be reviewed and ranked by a Selection Committee.
 - i. The Selection Committee will make a recommendation to the appropriate RTA committee for consideration and recommendation to the Board.
 - ii. The respective Board Committee and Board of Directors will act to approve or reject the recommendation.
 - iii. At its discretion, the RTA may reject all responses and either rebid or cancel the RFP in question.
- E. For administrative and/or non-operations services, written price quotations from at least three (3) qualified and responsible vendors shall be obtained or a memorandum shall be kept on file showing that fewer than three (3) qualified and responsible vendors exist in the market area within which it is practicable to obtain quotations. The procurement memorandum should describe the approach staff used to determine the procurement price is fair and reasonable, and describe how that determination was made. For administrative/non-operational procurements not exceeding \$5,000 in value services may be negotiated directly with the vendor and procured without using competitive bidding.
- F. RTA is a public body as defined by Michigan's Freedom of Information Act (FOIA). All non-cost information will be subject to disclosure under FOIA as of the RFP return deadline date. All cost information included in the RFP response will be subject to disclosure under FOIA at the time and place of public opening, if a public opening notice is included in the RFP. Until the public opening, proposals will be held in confidence and will not be revealed to or discussed with competitors or the public.

3.7 Selection Committee

The Procurement Administrator shall have the discretion to appoint the Selection Committee. Input into the makeup of the Selection Committee can be provided by RTA staff, members of the Board, the DBE liaison officer, and other individuals who have knowledge and/or relevant experience on the subject as deemed necessary by the RTA.

External reviewers outside of RTA staff and Board members may be used on those procurements that involve scope of work elements with extensive public outreach or service expansion opportunities. A list of external reviewers will be developed from Citizen Advisory Committee membership, and other stakeholders who may wish to provide input into the RTA's procurement process. All external reviewers will be required

to sign the RTA Code of Conduct and Conflict of Interest Policy to ensure no conflict of interest exists.

3.8 Selection Committee Member's Conflict of Interest

The Procurement Administrator must assure that no member(s) on the Committee has any appearance of a conflict of interest. Any member that has a conflict of interest shall be removed from the Selection Committee. If there is participation on the Selection Committee from non-RTA employees, contractors or Board members, they must complete and sign the RTA Code of Conduct and Conflict of Interest Form.

3.9 RTA Board of Director's Procurement Summary Package

For applicable selections (see Section 2.1), following the selection recommendation made by the Selection Committee, RTA staff shall assemble a selection recommendation memo for the appropriate RTA Board Chairman/his or her designee or Committee review depending on contract size. This memo shall contain the following information

- a summary of the Selection Committee scores,
- a summary of the performance of each bidder versus the requirements and
- a synopsis of how the decision was made.

3.10 Debriefing

Feedback may be provided by the Procurement Administrator following a selection at the request of the vendor. Feedback will be provided via phone, e-mail, or in person, as determined by the Procurement Administrator.

CONTRACT PROVISIONS

All contracts require approval in accordance with Part A, Section 2.1, Contract Approval Requirements. All contracts shall include provisions to define a sound and complete agreement, appropriate to the type and complexity of the project. At a minimum, these include a well-defined statement of work or specification, delivery schedule, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws and regulations. For all contracts above the small purchase limit, such clauses shall include a disputes clause, and the right of the Board to terminate the contract for breach or default of the Contractor, and to terminate the contract for the convenience of the Board, without liability. Contracts shall not incorporate options, except to the extent that options for additional or alternative goods or services are incorporated in the contract award, and clauses stating the Board's right to exercise options for additional terms, including any pricing or other definitions of each such option. For all procurements involving federal dollars, the following provisions apply.

APPLICABILITY OF THIRD-PARTY CONTRACT PROVISIONS

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

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

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