



July 21, 2010

To: Finance and Administration Committee
From: Will Kempton, Chief Executive Officer
Subject: Federal Transit Administration Procurement System Review

Overview

The Federal Transit Administration has completed a review of the Orange County Transportation Authority's procurement system. The review identified three deficiencies in system-wide policies and procedures and ten deficiencies in contract file requirements. The Contracts Administration and Materials Management Department modified policies and procedures and implemented other process enhancements to ensure compliance with all federal requirements. On July 7, 2010, Orange County Transportation Authority management received confirmation that the Federal Transportation Administration is satisfied with the action taken and has closed out all deficiencies.

Recommendation

Receive and file as an information item.

Background

The Orange County Transportation Authority (OCTA) underwent its first Federal Transit Administration (FTA) Procurement System Review (PSR) in March 2010. The PSR is one of several FTA targeted-scope reviews designed to improve procurement operations, promote the use of best practices, and assess an agency's compliance with federal requirements. According to the FTA, transit agencies are selected for PSR's based on a risk assessment that heavily weights, as a selection criteria, the size of an agency's operations.

The FTA employed contract audit firm Milligan & Company, LLC (Milligan) to perform the PSR. The PSR consisted of two components: a system-wide evaluation of OCTA's procurement policies and procedures to ensure consistency with federal requirements, and a review of 23 contract files for evidence of compliance with these requirements.

Discussion

The final report of OCTA's PSR (Final Report) is included as Attachment A. OCTA's first response is included at Attachment B and the details of that response were incorporated in the Final Report. Subsequent to the issuance of the Final Report, OCTA provided a second response (Attachment C) to four deficiencies that were not satisfactorily closed before the Final Report was issued. FTA's letter confirming closeout of these four remaining deficiencies can be found at Attachment D.

In the Final Report, Milligan identified three deficiencies in OCTA's systemwide procurement policies and procedures. First, OCTA's written protest procedures did not specify that a protestor must exhaust all administrative remedies with OCTA before pursuing a protest with FTA. Furthermore, the policy did not indicate that OCTA would keep FTA informed of the status of protests. OCTA's Contracts Administration and Materials Management (CAMM) Department revised its policies and procedures to include these requirements, as indicated in its response on pages 2-5 of Attachment B. FTA was satisfied with the action taken and closed the deficiency.

The second systemwide deficiency related to the lack of a policy requiring an economic analysis of leasing versus purchasing. The CAMM Department developed a policy and procedure as indicated on pages 6-8 of Attachment B. The FTA was also satisfied with this corrective action and closed the deficiency.

The third systemwide deficiency related to numerous policy requirements that are specified in FTA's Third Party Contracting Circular (Circular). While the CAMM Department had referred to the Circular in its policies and procedures, the FTA requires specific language. The recommended policy elements are detailed on page 8 of the report at Attachment A. The CAMM Department revised policies and procedures as indicated on pages 9-51 of Attachment B. However, in its final report at Attachment A, the FTA requested that additional language be added to OCTA's policies and procedures with regard to price ceilings on time and materials contracts as well as liquidated damages. The CAMM Department proposed additional corrective action as found at Attachment C and the FTA was satisfied with the response.

Milligan selected 23 contract files for review. The review of each file included review of compliance with 56 elements, as applicable, and as listed on pages 26-29 of Attachment A.

According to FTA's review methodology, an error in one element of one contract file results in a deficiency. The same error in all contract files results in the same, single deficiency. FTA identified ten deficiencies. However, in an effort to establish a more precise understanding of OCTA's level of compliance

with FTA requirements, the Internal Audit Department computed an error rate. This was done by summing all applicable elements for the 23 files. Total applicable elements for the 23 reviewed files were 410. Of these, Milligan identified 32 errors, representing an error rate of 7.8 percent, or 92.2 percent compliance.

The ten contract file deficiencies identified by Milligan can be found on page 26 of the report at Attachment A. The CAMM Department's corrective actions are included on pages 52-105 of Attachment B and throughout Attachment C.

Six of 23 contract files reviewed lacked an independent cost estimate (ICE), as required by OCTA's procurement policies and procedures. ICEs are prepared by project managers during the development of the scope of work to allow for thorough evaluation and negotiation of prices proposed by contractors. The CAMM Department has developed a standard form for use by project managers in developing ICEs and will require that they be submitted with procurement requisitions. See pages 52-55 of Attachment B. The FTA was satisfied with this action and closed the deficiency.

One of the 23 contract files reviewed lacked an analysis that established that a potential contractor was responsible prior to an award of contract. The CAMM Department updated procedures to ensure that this determination is made and documented in procurement files; however, the updates were specific to sole source procurements. The FTA's Final Report suggested that procedures be further modified and the CAMM Department proposed additional language. These additional revisions were accepted by the FTA.

Ten of the 23 contract files reviewed were for procurements that generated single bids. Of the ten, two did not include sufficient analysis of the reason for the lack of competition. The CAMM Department updated its policies and procedures to require determination and documentation of a competitive environment. See pages 58-62 of Attachment B. The FTA was satisfied with the corrective action and closed this deficiency.

Five of the 23 contract files reviewed were for procurements of less than \$50,000. OCTA procurement policies and procedures require that the CAMM Department perform a price or cost analysis to determine if the pricing is fair and reasonable. Of the five contract files, two sole-source procurements lacked sufficient evidence that this analysis had been performed. The CAMM Department developed a checklist to assist staff in documenting this analysis. See page 65A of Attachment B. The FTA was satisfied with the corrective action and closed this deficiency.

The remaining eighteen of 23 contracts exceeded \$50,000. Two of the contracts were intergovernmental agreements with the Los Angeles County Metropolitan Transportation Authority for a regional rideshare program and one

was for a single-bid procurement of buses. The procurement files did not include evidence that a cost or price analysis had been performed. The CAMM Department amended policies and procedures for interagency agreements and single bids at page 67 of Attachment B. The FTA was satisfied with the corrective action and closed this deficiency.

Two of the 23 contract files reviewed did not contain adequate written records of the procurement histories, including rationale for the method of procurement selection or the contract type used. In response to this finding, the CAMM Department developed a procurement plan document. See pages 69-71 of Attachment B. The FTA was satisfied with the corrective action and closed this deficiency.

One of 15 applicable contract files was found to have an advance payment clause which is prohibited without the express permission of FTA. The contract related to the purchase of vanpool advertising and was for less than \$50,000. The CAMM Department modified policies and procedures to ensure advance payments are only used where justified and with the permission of FTA. However, FTA has requested additional clarification on these policy revisions. The CAMM Department provided this clarification in Attachment C and FTA closed the deficiency.

One of seven applicable contract files was found to have progress payment provisions that do not adequately protect FTA's financial interest in equipment. According to a contract for software migration licenses, the contractor was allowed to invoice after a first delivery date, leaving OCTA vulnerable in the event the contractor failed to complete the system-wide migration. The CAMM Department has included policies on progress payments on page 76-78 of Attachment B. The FTA was satisfied with the corrective action and has closed this deficiency.

One contract file reviewed was for the purchase of buses on another transit agency's contract. Milligan concluded that there was no written documentation from that agency agreeing to the assignment; however, OCTA has since provided FTA with evidence that OCTA had obtained agreement. The FTA was satisfied with the response and closed this deficiency.

Finally, for ten of the 23 contract files reviewed, contract clauses were found to be deficient in some respect. The CAMM Department updated its contract and purchase order templates to reflect the required language. See pages 83-105 of Attachment B. However, FTA was not satisfied with certain of the revisions and requested additional revisions to the templates before it closed the deficiency.

It should be noted that, during the exit meeting conducted at the conclusion of Milligan's review, the FTA was very complimentary of OCTA and its

procurement function. The FTA indicated that OCTA's fully staffed and experienced CAMM Department is professional, responsive and demonstrated a good understanding of FTA procurement requirements.

The FTA was also complimentary of OCTA's procurement manual, suggesting that, with the incorporation of Milligan's recommendations, the procurement manual would become a model for other grantees. The FTA representative indicated he would direct other FTA grantees to OCTA for best practices in procurement.

Finally, the FTA representative conveyed his appreciation to OCTA on a broader level, indicating that OCTA consistently demonstrates its understanding of the importance of compliance with FTA requirements. OCTA, he stated, continues to be a responsive and proactive agency that takes compliance matters seriously.

Summary

The FTA conducted a PSR in March 2010, and made recommendations to improve OCTA's compliance with federal procurement requirements. The CAMM Department implemented all recommendations and FTA closed out the deficiencies.

Attachments

- A. Federal Transit Administration Final Report of the Procurement System Review of Orange County Transportation Authority, Orange, CA June 2010
- B. May 17, 2010 letter to Nadeem S. Tahir, P.E., CCM, U.S. D.O.T. Federal Transit Administration, Region IX, including Orange County Transportation Authority's responses to Orange County Transportation Authority's Procurement System Review
- C. June 28, 2010 letter to Nadeem S. Tahir, P.E., CCM, U.S. D.O.T. Federal Transit Administration, Region IX, including Orange County Transportation Authority's responses to Orange County Transportation Authority's Procurement System Review

- D. July 7, 2010 letter to Mr. Will Kempton, Chief Executive Officer, Orange County Transportation Authority, from Leslie T. Rogers, Regional Administrator for the U.S. Department of Transportation, Federal Transit Administration indicating closeout of all remaining deficiencies in the Final Report of the Procurement Systems Review of June 2010

Approved by:

A handwritten signature in cursive script that reads "Kathleen M. O'Connell".

Kathleen M. O'Connell
Executive Director, Internal Audit
(714) 560-5669

FEDERAL TRANSIT ADMINISTRATION

**FINAL REPORT
OF THE
PROCUREMENT SYSTEM REVIEW
OF**



**ORANGE COUNTY TRANSPORTATION AUTHORITY
ORANGE, CA
JUNE 2010**

**Conducted by a Procurement
Management Review Team from
Milligan & Company, LLC
Philadelphia, PA**

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EXECUTIVE SUMMARY

Milligan & Company, LLC (MILLIGAN), under contract to the Federal Transit Administration (FTA), performed a Procurement System Review of the Orange County Transportation Authority (OCTA).

Transit service in Orange County, California is provided by the Orange County Transportation Authority (OCTA). OCTA is responsible for planning and implementing fixed route, paratransit, and ride-sharing transportation services. OCTA also has the responsibility for administering the Master Plan of Arterial Highways, area highways, transit ways, and High Occupancy Vehicle lanes, and the 91 Express Lanes Toll Road. OCTA's service area is 797 square miles with an approximate population of over 3 million.

The procurement function of OCTA is handled by the Contracts Administration and Materials Management Department (CAMM). CAMM conducts all purchasing activities for OCTA. The department develops and issues solicitations for all goods, inventory items, consultant and professional services, and public works (construction) projects.

This Procurement System Review (PSR), conducted from March 1-5, 2010, was performed in accordance with FTA procedures and included a procurement assessment phase and a contract review phase. During the assessment phase, a review was conducted of the organizational structure, staffing, management direction, and policies and procedures that define OCTA's procurement system environment.

The contract review phase included interviews with key management and staff personnel and a review of contract files and supporting documents. The MILLIGAN team reviewed small purchases and FTA-funded capital projects.

This report contains several findings aimed at assisting OCTA in conducting their procurements in compliance with Federal requirements. Of the 56 elements designated for review, OCTA was found not deficient in 40 elements, and 3 elements were not applicable. Deficiencies were found in the remaining 13 elements. These deficiencies are addressed in the body of this report. Based on responses to the draft report, nine of these findings were closed, leaving four deficiencies remaining to be addressed.

PROCUREMENT SYSTEM REVIEW BACKGROUND

DESCRIPTION

The objectives of the Procurement System Review (PSR) are to encourage and facilitate improved grantee procurement operations, promote the use of best practices, and assess the grantee's compliance with all Federal requirements, specifically the requirements of FTA Circular 4220.1F and the Pre-Award, Post-Delivery Rule applicable to Buy America requirements. The PSR is designed to be a customer-oriented review that encourages working relationships between FTA and the grantees.

This PSR was performed in accordance with FTA procedures and includes a risk assessment phase, a contract review phase, and a reporting phase. The risk assessment phase includes a review of regional office documents, grantee document review, system-wide requirements review, and documentation of risk assessment. The contract review phase includes a site visit, interviews, sample selection, contract files review, and follow-up interviews. The specific documents reviewed are referenced in this report and are available at FTA's Regional Office or at recipient administrative offices. The reporting phase consists of reporting the findings of the review. It includes a draft report, a draft final report, and a final report.

Attendees at the entrance and exit conferences are shown in Appendix A.

REQUIRED ELEMENTS

The PSR looks at both system-wide and individual procurement elements. System-wide procurement elements are requirements that apply to the procurement system as a whole. Individual procurement elements are evaluated on an individual contract basis and summarized across all contracts reviewed.

CLASSIFICATION OF FINDINGS

The review team determined the status (not deficient/deficient/not applicable) for each system-wide and individual procurement element. The review team determined the status for: (1) system-wide elements based on the results of the System-wide Elements Review Checklist; and (2) each individual procurement element based upon all the contract files reviewed.

Two levels of findings are used:

Not Deficient: A finding of "not deficient" indicates that the grantee complied with the basic requirements of the element. This is defined as: "The review of selected procurement files found that in all instances the grantee complied with the requirement."

Deficient: A finding of "deficient" indicates that the grantee did not always comply with the requirements of the element. This is defined as: "The review of selected procurement files found that in one or more of the applicable instances, the grantee did not comply with the requirement."

DESCRIPTION OF THE GRANTEE

OCTA is a multi-modal transportation agency that began in 1991 with the consolidation of seven separate transportation agencies. OCTA's service area is 797 square miles with an approximate population of over 3 million. The agency provides service to the 34 cities in Orange County, California and parts of the cities of Artesia, Cerritos, Diamond Bar, Hawaiian Gardens, Lakewood, La Mirada, Long Beach, Corona, Riverside, Chino, and Chino Hills.

Bus service consists of 43 local routes, 10 express routes, 11 community, and 13 rail-feeder routes. Twenty-one routes are contracted to a private transportation provider. Service typically operates from 5:30 a.m. to 10:00 p.m. Complementary paratransit service is provided by OCTA under contract to Veolia Transportation.

OCTA funds and supervises Metrolink, the regional rail service which makes stops throughout Orange County and surrounding counties as well. Currently there are three Metrolink lines operating in Orange County — the Orange County Line, the Inland Empire-Orange County Line and the 91 Line — with 9 stations.

OCTA has five operating facilities located in the cities of Garden Grove, Anaheim, Santa Ana, and two in Irvine. The administrative offices are located in the City of Orange.

In addition to providing bus, rail, and ADA complementary paratransit services described above, OCTA also owns and operates the 91 Express Lanes toll facility, conducts freeway, street and road improvement projects, provides motorist aid services, and operates the Orange County Taxi Administration Program (OCTAP), a regulatory program for taxi operations.

Compliance activities related to OCTA's procurement processes are summarized below:

- FTA's Triennial Review conducted in FY2007 contained two findings regarding FTA's requirements for procurement. Areas of deficiency included: FTA clauses and lobbying certification not signed by the contractor.
- FTA's Single Audit Review conducted in 2008 had three findings related to procurement. Areas of deficiency included: the need to strengthen the controls over third party contractors; the need for an established policy on misconduct; and the need to adhere to the Buy America requirements.

RESULTS OF THE REVIEW

The results of the review are summarized for each system-wide and individual procurement element. For each procurement requirement, the report describes the required element, cites a reference to FTA Circular 4220.1F and other applicable regulations, discusses the issues and identifies findings, recommends corrective actions and schedules, and presents excerpts from FTA's Best Practices Procurement Manual (BPPM). Excerpts from FTA's BPPM are not presented as requirements rather they are presented for technical assistance purposes. The procurement review summary table is provided in Appendix B.

SYSTEM-WIDE PROCUREMENT ELEMENTS

System-wide procurement elements are requirements that apply to the procurement system as a whole. The system-wide procurement elements are primarily evaluated during the assessment phase. The findings in this section are a result of these interviews and additional insights gained during the contract review phase. The results are presented below. Those elements for which the grantee is “not deficient” are shown first, and those defined as “deficient” with respect to that element are shown second. Within each category, the numbered element appears as it is listed in FTA’s PSR Guide.

Not Deficient

A full description of the elements for which the grantee is not deficient is in Appendix C. The grantee is not deficient in the following system-wide procurement elements:

- Element 1 – Written Standards of Conduct
- Element 2 – Contract Administration System
- Element 4 – Prequalification System

Deficient Elements

The grantee is deficient with respect to the following system-wide procurement elements:

Element (3) Written Protest Procedure

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

The Common Grant Rule for governmental recipients requires a governmental recipient to notify FTA when it receives a third party contract protest to which this circular applies, and to keep FTA informed about the status of the protest.

The protester must exhaust its administrative remedies by pursuing the recipient’s protest procedures to completion before appealing the recipient’s decision to FTA. The protester must deliver its appeal to the FTA Regional Administrator for the region administering its project or the FTA Associate Administrator for the program office administering its project within five (5) working days of the date when the protester has received actual or constructive notice of the recipient’s final decision.

FTA will limit its review of third party contract protests as follows:

- (1) The Recipient’s Procedural Failures (A grantee’s failure to have or comply with its protest procedures, or its failure to review a complaint or protest); or*
- (2) Violations of Federal law or regulation.*

An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA.

FTA C 4220.1F Ch. VII, 1

Discussion

OCTA is deficient with respect to this element.

OCTA's protest procedures lack the following:

- Guidance for vendors regarding the point in the process at which the vendor can pursue a protest with FTA (after all administrative remedies have been exhausted).
- Guidance for employees indicating the requirement to keep FTA informed about the status of the protest.

Corrective Action and Schedule

In order to comply with federal regulations, the OCTA's protest procedures must be updated to include the elements indicated above. A corrective action plan and schedule should be submitted to the FTA Region IX Office within 30 days of receipt of the draft report.

Grantee Response

OCTA's Policies and Procedures have been updated to include items 1 & 2 above.

Milligan's Comments

Milligan has reviewed the updated Policies and Procedures. This deficiency is now closed.

Excerpts from FTA's Best Practices Procurement Manual BPPM § 11.1

Content of Procedures – To ensure that protests are received and processed effectively, all grantees must have adequate written bid protest procedures. It is recommended that these procedures be included or referenced in the solicitation document. If they are referenced, information must be included on how a copy of the procedures may be acquired by an interested party. When the procedures are requested, they should be provided immediately. The written procedures typically address the following elements:

- Difference in Procedures for pre-bid, pre-award, and post-award protests;
- Specific Deadlines (in working days) for filing a protest, filing a request for reconsideration, and for the grantee's response to a protest;
- Specific contents of a protest (Name of protester, solicitation/contract number or description, statement of grounds for protest);
- Location where protests are to be filed;
- Statement that the grantee will respond, in detail, to each substantive issue raised in the protest.
- Identification of the responsible official who has the authority to make the final determination;
- Statement that the grantee's determination will be final;
- Statement that FTA will only entertain a protest that alleges the grantee failed to follow their protest procedures and that such a protest must be filed in accordance with the Circular; and
- Allowance for request for reconsideration (if data becomes available that was not previously known, or there has been an error of law or regulation).

Element (5) System for Ensuring Most Efficient and Economic Purchase

The Common Grant Rules require the recipient to establish procedures to avoid the purchase of unnecessary property and services it does not need (including duplicative items and quantities or options it does not intend to use or whose use is unlikely).

[FTA C4220.1F, Ch. IV, 1.b](#)

Discussion

OCTA is deficient with respect to this element.

OCTA's procedures lack a requirement to perform an analysis of lease versus purchase alternatives when appropriate.

Corrective Action and Schedule

In order to comply with federal regulations, the OCTA's procurement procedures must be updated to include a requirement to identify instances when it may be more cost effective to make a procurement using a lease alternative versus a purchase. In addition, the procedures must require that an analysis will be made of the lease versus purchase alternative when appropriate. A corrective action plan and schedule to update the procedures should be submitted to the FTA Region IX Office within 30 days of receipt of the draft report.

Grantee Response

OCTA has developed a new Policy and Procedure.

Milligan's Comments

Milligan has reviewed the new Policy and Procedure. This deficiency is now closed.

Excerpts from FTA's Best Practices Procurement Manual BPPM § 1.3.3.7

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

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

Element (6) Procurement Policies and Procedures

The Common Grant Rule for non-governmental recipients requires the recipient to have written procurement procedures, and by implication, the Common Grant Rule for governmental recipients requires written procurement procedures as a condition of self-certification.

FTA C4220.1F Ch. III, 3.a.

Discussion

OCTA is deficient with respect to this element.

OCTA's Policies and Procedures Manual should be updated to include the following elements required by FTA's Third Party Contracting Circular:

1. Guidance on when time and materials contracts may be used;
2. Specific prohibition of Tag-ons;
3. Specific prohibition of unreasonable requirements;
4. Specific prohibition of splitting purchases to avoid competition (micro-purchases);
5. Requirement that the files include documentation that prices are fair and reasonable (small purchases);
6. Requirement that the files contain documentation for the business reason when all bids are rejected;
7. Provisions defining the use of "best value" basis for determining the award of contracts procured under the competitive proposal method;
8. Provisions for addressing design/build contracts;
9. A description of the cost principals used by OCTA to define eligible contract costs and a confirmation that the cost principals conform to federal cost principals for eligibility of contract costs;
10. Specific prohibition on the use of Cost Plus Percentage of Cost contracting;
11. Specific prohibition on the use of Advance Payments without written FTA concurrence;
12. Requirement to obtain adequate security when utilizing progress payments;
13. Requirements for the use of liquidated damages;
14. Requirement that contracts above the small purchase threshold contain remedies for breach of contract;
15. Requirement that contracts in excess of \$10,000 must have termination for cause and termination for convenience provisions; and
16. Requirement that revenue contracts be awarded utilizing competitive selection procedures.

Corrective Action and Schedule

OCTA's Procurement Policies and Procedures must be updated to address FTA requirements. The updated Procurement Policies and Procedures should include all procurement requirements as contained in FTA's current Third Party Procurement Circular. Submit a corrective action plan and schedule for implementation to the FTA Region IX Office within 30 days of receipt of the draft report.

Grantee Response

OCTA has developed or updated its Policies and Procedures to address each of the sixteen items listed in this deficiency.

Milligan's Comments

Milligan has reviewed each of the sixteen new or updated sections of OCTA's Policies and Procedures. Each of the deficiencies is now closed with the following exceptions:

- Item 1. In accordance with FTA Circular 4220.1F, Chap. IV, 2.c (2)(b), add wording that states that Time and Materials Contracts shall specify a ceiling price that shall not be exceeded by the contractor except at its own risk.
- Item 13. In accordance with FTA Circular 4220.1F, Chap. IV, 2.b (6)(b)(1), add wording that requires that the rate for liquidated damages must be specified in the procurement solicitation, as well as the contractor's agreement.

To close this finding, provide the FTA Region IX Office a revised policy that addresses the above points by July 1, 2010.

INDIVIDUAL PROCUREMENT ELEMENTS

Individual procurement elements are applicable to the contract files reviewed. These findings were compiled from all contracts reviewed by each individual procurement element. The results are organized by category of findings. Those elements for which the grantee is in compliance are shown first, followed by the elements that are found to be deficient.

Not Deficient

A full description of the elements for which the grantee is not deficient is in Appendix C.

- Element 8 – A&E Geographic Preferences
- Element 9 – Unreasonable Qualification Requirements
- Element 10 – Unnecessary Experience and Excessive Bonding
- Element 11 – Organizational Conflict of Interest
- Element 12 – Arbitrary Action
- Element 13 – Brand Name Restrictions
- Element 14 – Geographical Preference
- Element 15 – Contract Term Limitation
- Element 16 – Written Procurement Selection Procedures
- Element 17 – Solicitation Prequalification Criteria
- Element 19 – Sound and Complete Agreement
- Element 22 – Micro-Purchase Davis Bacon
- Element 23 – Price Quotations [Small Purchase]
- Element 24 – Clear, Accurate and Complete Specification
- Element 26 – Firm Fixed Price [Sealed Bid]
- Element 27 – Selection on Price [Sealed Bid]
- Element 28 – Discussions Unnecessary [Sealed Bid]
- Element 29 – Advertised/Publicized
- Element 30 – Adequate Number of Sources Solicited
- Element 31 – Sufficient Bid Time [Sealed Bid]
- Element 32 – Bid Opening [Sealed Bid]
- Element 33 – Responsiveness [Sealed Bid]

Element 34 – Lowest Price [Sealed Bid]
Element 35 – Rejecting Bids [Sealed Bid]
Element 36 – Evaluation [RFP]
Element 37 – Price and Other Factors [RFP]
Element 38 – Sole Source if Other Award is Infeasible
Element 40 – Evaluation of Options
Element 43 – Exercise of Options
Element 44 – Out of Scope Changes
Element 47 – Time and Materials Contract
Element 48 – Cost Plus Percentage of Cost
Element 49 – Liquidated Damages Provision
Element 51 – Qualifications Exclude Price [A&E]
Element 52 – Serial Price Negotiations [A&E]
Element 53 – Bid Security [Construction Over \$100,000]
Element 54 – Performance Security [Construction Over \$100,000]
Element 55 – Payment Security [Construction Over \$100,000]

Not Applicable Elements

The following elements were rated as “not applicable” because the grantee did not award the types of contracts/purchase orders that included these elements. A full description of these elements is contained in Appendix D.

Element 20 – No Splitting [Micro-purchase]
Element 21 – Fair and Reasonable Price Determination [Micro-purchase]
Element 22 – Micro-Purchase Davis Bacon

Deficient Elements

The grantee is deficient with respect to the following individual procurement elements:

Element (7) Independent Cost Estimate

The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

[FTA C4220.1F, Ch. VI, 6](#)

Discussion

OCTA is deficient with respect to this element.

In six of the files reviewed, OCTA did not comply with the requirement to conduct an independent cost estimate (ICE) before receiving bids and proposals. Independent cost estimates were deficient in the following procurement files:

- **Direct Advertising Response, Inc.** - The file was lacking an initial documented independent cost estimate.
- **New Flyer of America** - The file was lacking an initial documented independent cost estimate.
- **Creative Bus Sales, Inc.** - The file was lacking an initial documented independent cost estimate.
- **Pardess Air, Inc.** - The independent cost estimate was prepared after the proposal due date.
- **CBS Outdoor, Inc.** - The independent cost estimate was undated.
- **Gorilla Nation Media** - The independent cost estimate was provided by the “answer/bag” and states that the cost of advertising can range between a few dollars to thousands of dollars.

Corrective Action and Schedule

A corrective action plan and schedule should be prepared and submitted to FTA Region IX Office within 30 days of receipt of this draft report. It is recommended that the corrective action plan include a procedure to standardize the elements that would constitute an adequate independent cost estimate. These elements should include documentation of the source, the date of the estimate and documentation of the person that prepared the estimate.

Grantee Response

OCTA developed an independent cost estimate form.

Milligan’s Comments

Milligan has reviewed the independent cost estimate form that OCTA developed. The forms contain the standardized information required in the proposed corrective action. This deficiency is now closed.

Excerpts from FTA’s Best Practices Procurement Manual BPPM §2.3.2.

A logical element of your annual procurement plan is a cost estimate for each major procurement. It is normally cost-effective to have an independent cost estimate that also satisfies the Federal requirement and to have such an estimate at some time before receiving bids or proposals. You may obtain such estimates from published competitive prices, results of competitive procurements, or estimates by in-house or outside estimators.

Purpose

The following are purposes of establishing a cost estimate using a method independent from the prospective offerors in advance of the offer:

- it ensures a clear basis for the grantee's determination that the benefits of the procurement warrant its cost;
- it provides essential procurement and financial planning information (see "Advance Procurement Plan," above); and

- it provides a basis for price analysis, which may assist in obviating the need for a more burdensome cost analysis.

Although it may seem self-evident that the agency has at least implicitly prepared a cost estimate in deciding to proceed with a procurement, many projects can change in scope without clear communication among the people responsible. For example, a management information system for parts inventory control may seem cost-effective, but may grow during discussions to include unanticipated electronic imaging, scanning of repair manual diagrams, unanticipated distributed processing devices, and multi-user programming. An independent cost estimate prepared when the agency first undertook the project could alert all involved that the project had grown beyond the scope originally intended. A deliberate decision to reduce the scope or revise the cost estimate can be made at each step of the project's development.

The cost estimate is essential information for procurement planning. It gives the contracting official some indication of the complexity of the project and the degree of investment that offerors will want to make in the procurement process, thus allowing planning of procurement time and personnel. It is also the basis for determining which procurement procedures apply to the project. If the cost estimate exceeds \$100,000, for example, a competitive solicitation is normally required. (State or local requirements may be stricter.) Similarly, certification and bonding requirements imposed by Federal regulations are triggered based on the value of the contract. (See "Methods of Procurement" FTA Circular 4220.1E, § 9; "Bonding Requirements," § 11; "Buy America" Master Agreement § 14 (a); "Debarment and Suspension" Master Agreement § 3 b.) However, the application of these and most other requirements depends not on the cost estimate, but on the contract amount.

A final purpose of the independent cost estimate is for price analysis. Either a cost or price analysis is required for every contract and every change order so that the essential objective of a reasonable price is assured. The adequacy of the price or cost analysis is a critical responsibility of the contracting official. In many contract awards the bids alone may be adequate to assure a reasonable price. However, in all negotiated procurements, most contract changes, sealed bids where price competition was not sufficient, and non-competitive awards, further analysis is required. An independent cost estimate prepared before receipt of offers is invaluable in these circumstances. The estimate alone may, if prepared with sufficient detail and reliability in the contracting official's judgment, be sufficient to determine whether the price is reasonable. It will at least supplement other pricing data in making the determination. Because cost analysis can be time consuming, expensive, and raise disputes, the availability of an independent pre-bid estimate, which allows for price analysis and obviates cost analysis, is worth material pre-bid effort.

In these circumstances, it is essential that the grantee's cost estimate be developed independently from the offerors' pricing submissions. If a bus purchase is being prepared, for example, the prospective offerors should not be relied upon for the independent cost estimate, except in the form of prior bids submitted with adequate competition.

Any price analysis or data collection performed after receipt of the offers, in addition to consuming valuable time during the limited validity of the offers, will not be as probative as data collected before the receipt of the offers. An independent cost estimate prepared before the receipt of the offers does not raise the question of whether the particular data and analysis was consciously or unconsciously intended to justify the award.

Element (18) Award to Responsible Contractor

SAFETEA-LU amended 49 U.S.C. Section 5325 to require FTA assisted contract awards be made only to "responsible" contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract.

Responsibility is a procurement issue that is determined by the recipient after receiving bids or proposals and before making contract award.

FTA C4220.1F, CH. VI, 8.b.

Discussion

OCTA is deficient with respect to this element.

A sole source contract was awarded to the firm of CBS Outdoor, Inc. in the amount of \$25,000. The purpose of this contract was to provide billboard advertising for the OCTA vanpool program. According to the OCTA sole source justification documents, OCTA had not entered into a contract with this firm before. There was no documentation or determination in the procurement file regarding the responsibility of this contractor.

Corrective Action and Schedule

A corrective action plan and schedule should be prepared and submitted to FTA Region IX Office within 30 days of receipt of this draft report. The corrective action plan shall include procedures to assure that a determination of responsibility is prepared as part of the recommendation for award of contracts.

Grantee Response

OCTA updated procedures to require that documentation be made.

Milligan's Comments

Milligan has reviewed the updated procedures that OCTA developed. The update was in connection with procedures for sole source procurements. OCTA should update its procedures to ensure that a determination of contractor responsibility is done with all competitive as well as non-competitive procurements. Submit documentation that procedures have been updated to the FTA Region IX Office by July 1, 2010.

Excerpts from FTA's Best Practices Procurement Manual BPPM §5.1.1. **General Standards of Responsibility**

To be determined responsible, a prospective contractor must meet all of the following requirements:

- (a) Financial resources adequate to perform the contract, or the ability to obtain them.
- (b) Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (c) A satisfactory performance record;
- (d) A satisfactory record of integrity and business ethics;
- (e) The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
- (f) Compliance with applicable licensing and tax laws and regulations;
- (g) The necessary production, construction, and technical equipment and facilities, or the ability to obtain

them;

(h) Compliance with Affirmative Action and Disadvantaged Business Program requirements; and

(i) Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

Element (25) Adequate Competition – Two or More Competitors

The following procedures apply to sealed bid procurements:

(a) *Bids are solicited from an adequate number of known suppliers.*

[FTA C4220.1F Ch. VI, 3.c.\(2\)\(b\)](#)

Discussion

OCTA is deficient with respect to this element.

OCTA did not comply with the requirement to determine if a competitive environment existed for two procurements. These procurements, with Creative Bus Sales, Inc. and JTL Technical Services, LLC, were competitively advertised and awarded on the basis of a single bid received. The procurement file for Creative Bus Sales did not contain documentation of any canvassing of potential vendors that chose not to submit a proposal. For JTL Technical Services, OCTA contacted two vendors, only one of which was an authorized dealer for the products solicited.

Corrective Action and Schedule

OCTA should ensure that an analysis is performed when a single bid or proposal is received as a result of a competitive procurement. This analysis should determine if there were any elements in the procurement documents that may have restricted competition and whether the procurement should be modified and bid or proposals re-solicited. OCTA shall revise its policies and procedures to require such an analysis whenever a single bid or proposal is received as a result of a competitive procurement. A corrective action plan and schedule should be submitted to FTA Region IX Office within 30 days of receipt of this draft report.

Grantee Response

Policies and Procedures have been updated to require a determination of competitive environment.

Milligan's Comments

Milligan has reviewed the updated Policies and Procedures that OCTA developed. This deficiency is now closed.

Excerpts from FTA's Best Practices Procurement Manual BPPM §4.4.3.

Adequacy of Competition - When only one bid is received in response to a solicitation that was issued to multiple sources, you will first have to determine if there was adequate competition. The FTA interpretive comment in the [Annotated FTA Circular 4220.1E](#), paragraph 10, makes clear the fact, that when only one bid is received, this does not, in itself, mean that competition was inadequate. In order to make this determination, it may be necessary to talk to those firms solicited to find out why they did not submit bids. If the reason is a restrictive specification or a delivery requirement that only one bidder could meet, you have a situation of inadequate competition. If this is the case then the procurement is a sole source and you

must process it as such with internal agency approvals, or cancel the solicitation, change the requirements to allow for more bids, and re-solicit bids. On the other hand, if the reasons given by the non-responders are unrelated to the specification and/or solicitation terms, then you may presume competition was adequate and proceed with the award as a competitive one. You should document your file so that there is a clear audit trail for reviewers to understand how you reached your determination.

Element (39) Cost Analysis Required [Sole Source]

When less than full and open competition is available to the recipient, the Common Grant Rule for governmental recipients directs the recipient to prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

FTA C4220.1F Ch. VI, 3.i.(3)(c)

Discussion

OCTA is deficient with respect to this element.

Deficiencies were noted for two sole source procurements. OCTA's Internal Audit Department performs a cost analysis for all sole source procurements that exceed \$50,000 prior to approval by the Board of Directors. Both procurements that were found deficient (CBS Outdoor, Inc. and Gorilla Nation Media) were below the \$50,000 threshold. As a result, these contracts did not require review by the Internal Audit Department or Board approval. The procurement files did not contain any documentation that a cost analysis was performed by OCTA to assure that the cost charged was fair and reasonable.

Corrective Action and Schedule

OCTA should submit a corrective action plan and schedule for this item to the FTA Region IX Office within 30 days of the receipt of this draft report. OCTA should implement procedures to ensure that the cost analysis is performed for sole source procurements with dollar values under \$50,000. In certain instances, it may be possible to determine if the price offered is fair and reasonable by analyzing catalog or market pricing offered to other buyers if quantities of other buyers are significant.

Grantee Response

OCTA's Policies and Procedures do require this analysis. A checklist has been developed to assist staff.

Milligan's Comments

Milligan has reviewed the existing Policies and Procedures as well as the new checklist that OCTA developed. This deficiency is now closed.

Excerpts from FTA's Best Practices Procurement Manual BPPM § 5.2

DISCUSSION

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

(a) Cost Analysis - A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost; e.g., under professional consulting and architectural and engineering services contracts.

A cost analysis will be necessary whenever adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

(b) Price Analysis - A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.

(c) Profit - Grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.

(d) Federal Cost Principles - Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with applicable Federal cost principles.

Element (41) Cost or Price Analysis

The Common Grant Rules require the recipient to perform a cost or price analysis in connection with every procurement action, including contract modifications.

[FTA C4220.1F Ch. VI, 6](#)

Discussion

OCTA is deficient with respect to this element.

OCTA entered into two annual intergovernmental agreements with the Los Angeles MTA. The purpose of these agreements was to provide funding for coordinated marketing of a regional rideshare program. Neither procurement file contained an analysis that the cost of the intergovernmental agreement was determined to be fair and reasonable.

A third procurement, Creative Bus Sales, Inc., was a competitive procurement that resulted in a single proposal. The file did not contain an analysis that the price quoted by Creative Bus Sales, Inc. was fair and reasonable.

Corrective Action and Schedule

OCTA should submit a corrective action plan and schedule for this item to the FTA Region IX Office within 30 days of the receipt of this draft report. The corrective action plan shall establish policies and procedures that will assure that a cost or price analysis is conducted prior to contract award.

Grantee Response

Procedures have been updated to include a cost price analysis.

Milligan's Comments

Milligan has reviewed the updated procedures that OCTA developed. This deficiency is now closed.

Excerpts from FTA's Best Practices Procurement Manual BPPM §5.2 DISCUSSION

Price Analysis

The accepted forms of *price analysis* techniques discussed in the *Pricing Guide for FTA Grantees* are:

1. Adequate price competition;
2. Prices set by law or regulation;
3. Established catalog prices and market prices;
4. Comparison to previous purchases;
5. Comparison to a valid grantee independent estimate; and
6. Value analysis.

1. *Adequate price competition* requires the following conditions:

- At least two responsible offerors respond to a solicitation.
- Each offeror must be able to satisfy the requirements of the solicitation.
- The offerors must independently contend for the contract that is to be awarded to the responsive and responsible offeror submitting the lowest evaluated price.
- Each offeror must submit priced offers responsive to the expressed requirements of the solicitation.

If the four conditions above are met, price competition is adequate unless:

- The solicitation was made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete.
- The low competitor has such an advantage over the competitors that it is practically immune to the stimulus of competition.
- The lowest final price is not reasonable, and this finding can be supported by facts.

2. *Prices set by law or regulation* are fair and reasonable. Grantees should acquire a copy of the rate schedules set by the applicable law or regulation. Once these schedules are obtained, verify that they apply to your situation and that you area being charged the correct price. For utility contracts, this policy applies only to prices prescribed by an effective, independent regulatory body.

3. *Established catalog prices* require the following conditions:

- Established catalog prices exist.
- The items are commercial in nature.
- They are sold in substantial quantities.
- They are sold to the general public.

The idea behind catalog prices is that a commercial demand exists and suppliers have been developed to meet that demand. You are trying to ensure that you are getting at least the same price as other buyers in the market for these items. You need to be sure that the catalog is not simply an internal pricing document. Request a copy of the document or at least the page on which the price appears.

Established market prices are based on the same principle as catalog prices except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the offeror. If you do not know the names of other commercial buyers and sellers, you may obtain this information from the offeror.

4. Comparison to previous purchases -

Changes in quantity, quality, delivery schedules, the economy, and inclusion of non-recurring costs such as design, capital equipment, etc. can cause price variations. Each differing situation must be analyzed. Also ensure that the previous price was fair and reasonable. This determination must be based upon a physical review of the documentation contained in the previous files.

5. Comparison to a valid grantee independent estimate -

Verify the facts, assumptions, and judgments used by your estimator. Have the estimator give you the method and data used in developing the estimate. For example, did prices come from current catalogs or industry standards? Be sure that you feel comfortable with the estimate before relying on it as a basis for determining a price to be fair and reasonable.

6. Value analysis requires you to look at the item and the function it performs so you can determine its worth. The decision of price reasonableness remains with the contracting officer; however, the requiring activity should always be consulted for their expertise, and they should participate in making the decision.

Element (42) Written Record of Procurement History

Procurement History. The Common Grant Rules require the recipient to maintain and make available to FTA written records detailing the history of each procurement, as follows:

- *Procurement Method.*
- *Contract Type.*
- *Contractor Selection*
- *Cost or Price*
- *Reasonable Documentation*

[FTA C4220.1F Ch. III, 3.d\(1\)](#)

Discussion

OCTA is deficient with respect to this element.

OCTA did not comply with the requirement to have a written record of the procurement history. The procurement files examined for Creative Bus Sales, Inc. and Dell Marketing, LP did not contain information documenting the rationale for the method of procurement used or the rationale for the selection of contract type used.

Corrective Action and Schedule

OCTA should ensure that the minimum required records are included in the procurement file. The memorandum submitted for items to be presented to the Board of Directors appeared to provide an excellent procurement history and could also be used for procurements that do not

meet the threshold for Board approval. A corrective action plan and schedule should be developed and submitted to FTA Region IX Office within 30 days of receipt of the draft report.

Grantee Response

The procurement plan has been revised to add the information.

Milligan's Comments

Milligan has reviewed the revised procurement plan form dated 3/3/2010 that OCTA developed. This form now contains the elements required in the Corrective Action. This deficiency is now closed.

Element (45) Advance Payment Provisions

The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence.

[FTA C4220.1F Ch. IV, 2.b\(5\)\(b\)](#)

Discussion

OCTA is deficient with respect to this element.

OCTA did not comply with the requirement to prohibit advance payments without the written concurrence of FTA. A sole source contract was awarded to CBS Outdoor, Inc. to purchase billboard advertising for OCTA's vanpool program. The contract between OCTA and CBS Outdoor, Inc. consisted of Terms and Conditions prepared by CBS Outdoor, Inc. Paragraph 8 of the Terms and Conditions stated that invoices will be rendered monthly in advance, dating from the commencement date of the agreement. There was no documentation that OCTA had obtained FTA concurrence.

Corrective Action and Schedule

OCTA should ensure that it does not enter into FTA funded contracts that require advance payments without obtaining FTA prior concurrence. Prior concurrence may be obtained for advance payments if the grantee can demonstrate that such payments are required and are normal and customary. A corrective action plan and schedule should be developed and submitted to FTA Region IX Office within 30 days of receipt of the draft report.

Grantee Response

OCTA's Policies and Procedures have been revised.

Milligan's Comments

Milligan has reviewed the revised Policies and Procedures that OCTA developed for advance payments. The revision lists various expenditure items that can be made as advance payments.

These items include maintenance agreements and construction mobilization costs. The revision also states that FTA prior written concurrence must be obtained if the expenditure includes FTA funding. It is unclear if the intent of this revision will require FTA written concurrence for all advance payments, including the items listed as exceptions, if FTA funds are included.

To close this finding, provide the FTA Region IX Office a revised policy to address the above areas by July 1, 2010.

Excerpts from FTA's Best Practices Procurement Manual BPPM § 2.4.4.2
DISCUSSION

Advance payments are actually a method of financing and not a method of paying for work completed or items delivered. They are made prior to a contractor's incurrence of costs in order to enable the contractor to perform the contract. The Federal Government places severe restrictions on its own use of advance payments (FAR coverage may be found at FAR Subpart 32.4). As indicated below in the paragraph "Exceptions to the Prior Approval requirement," when advance payments are generally accepted industry practice, FTA does not require prior approval.

The FTA Circular requires FTA approval before grantees may use this form of financing on third-party contracts. However, the FTA [Dear Colleague Letter](#) dated June 15, 2001 clearly restricts the advance payment prohibition to those contracts where the grantee is using FTA funds for the advance payment. If the advance payments are being made with non-FTA funds, then FTA has no involvement in the decision and need not approve of it. Grantees are free to use local funds to finance their contractors in this manner if they deem it appropriate. The [Dear Colleague Letter](#) also covers the situation where a grantee may wish to use local funds for advance payments before a grant has been awarded or before FTA has issued a letter of no prejudice to the grantee. In these cases FTA will not reimburse the grantee later for such payments.

Exceptions to the Prior Approval Requirement- The FTA requirement for prior approval of advance payments does not apply to transactions where it is "generally accepted industry practice" to pay in advance. In these situations, grantees may make advance payments without prior FTA approval. These situations would include (but not necessarily be restricted to) the following types of transactions:

1. Rent
2. Tuition
3. Insurance premiums
4. Subscriptions to publications
5. Software licenses
6. Construction mobilization costs
7. Public utility connections

Element (46) Progress Payment Provisions

The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

FTA C4220.1F Ch. IV, 2.b(5)(c)

Discussion

OCTA is deficient with respect to this element.

OCTA did not comply with the requirement to obtain adequate security prior to making a progress payment.

OCTA's contract with Dell Marketing, LP provided for two delivery dates and allowed the contractor to invoice upon receipt of goods and services after the first delivery date. The contractor was providing migration licenses for Windows 2008 to various servers on a corporate system-wide basis. Failure of the contractor to perform after the first payment would leave OCTA with an incomplete system-wide migration. However, OCTA's contract did not include a provision to protect OCTA's (or FTA's) financial interest for partial work completed and paid for.

Corrective Action and Schedule

OCTA should ensure that adequate provisions are contained in contracts that will provide security and protect OCTA's interest when making progress payments. It was apparent that CAMM as well as OCTA's attorney perform pre-solicitation reviews of procurement documents. It is recommended that this be included in a pre-solicitation checklist. A corrective action plan and schedule should be developed and submitted to FTA Region IX Office within 30 days of receipt of the draft report.

Grantee Response

OCTA's Policies and Procedures have been revised.

Milligan's Comments

Milligan has reviewed the revised Policies and Procedures developed by OCTA. This deficiency is now closed.

Excerpts from FTA's Best Practices Procurement Manual BPPM § 2.4.4.3

DISCUSSION

Progress payments are to be distinguished from *partial payments*. *Partial payments* are payments made, as authorized by the contract, upon delivery and acceptance of one or more complete units (or one or more distinct items of service) in accordance with the contract specifications, even though other quantities remain to be delivered. Note that *partial payments are for completed units*, whereas *progress payments are for uncompleted work-in-progress*.

Because the grantee is making payments for uncompleted, non-functional units, FTA requires that adequate security be obtained from the contractor protecting the grantee's (and FTA's) investment in case the contractor fails to complete the deliverable units. The form of security is to be determined by the grantee based on what is in the best interests of the grantee in the particular circumstances.

Element (50) Piggybacking

Although FTA does not encourage the practice, a recipient may find it useful to acquire contract rights through assignment by another recipient. A recipient that obtains contractual rights through assignment may use them after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights. See, FTA's "Best Practices Procurement Manual" for further information about procurements through assignment of another's contract rights. The recipient using assigned contract rights is responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required preaward and post delivery Buy America review certifications. For further details, please refer to FTA's Pre-Award and Post-Delivery Handbooks for buses and rail cars, which contain copies of those certifications. The recipient seeking to use assigned contract rights will not usually be able to determine whether the assigning recipient originally procured unreasonably large quantities. Before proceeding with the assignment, however, FTA does expect the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract

[FTA C4220.1F, Ch. V, 7.a \(2\) \(a\)](#)

Discussion

OCTA is deficient with respect to this element.

OCTA purchased buses from Creative Bus Sales, Inc. by piggybacking onto a contract that was originally awarded by the San Mateo County Transit District in San Mateo, California. The procurement file did contain documentation that an assignability clause was included in the original contract. The file also contained OCTA's request to San Mateo for assignment of 33 buses. However, there is no written documentation of San Mateo agreeing to the assignment. OCTA provided a Waiver and Release document that was apparently requested by the San Mateo County Transit District. In this document, San Mateo agrees to assign the 33 buses to OCTA in exchange for certain releases from OCTA. While this document could have potentially served as documentation of San Mateo's agreement to assign, the document was not executed by San Mateo. The only signature on the Waiver and Release is from OCTA. The document did not provide for the countersignature of San Mateo.

An informal complaint was received by the OCTA Board of Directors from a vendor that claimed the San Mateo procurement did not meet FTA competitive procurement requirements and that OCTA could procure an equivalent vehicle from him for less money. OCTA investigated this complaint and found it without merit.

San Mateo received two separate proposals from one firm, Creative Bus Sales, Inc., for vehicles manufactured by different suppliers in response to its RFP. San Mateo considered the procurement to be competitive, evaluated each proposal and selected the highest scoring

proposal. It is unusual for one company to submit multiple competitive proposals. Such practices can potentially lead to reducing a full and open competitive environment. It was recommended that OCTA establish a policy of allowing only one bid per vendor for each procurement action.

Corrective Action and Schedule

OCTA should develop a specific checklist for piggyback procurements. A sample checklist exists in the Best Practices Procurement Manual. Corrective action should include obtaining a letter from San Mateo confirming that they agreed to the assignment. In addition, OCTA should formulate separate policies and procedures for piggyback procurements and incorporate them into OCTA's Policies and Procedures. A corrective action plan and schedule should be submitted to FTA Region IX Office within 30 days of receipt of this draft report.

Grantee Response

An e-mail has been provided that verifies the agreement for assignment from San Mateo. A piggybacking checklist has also been developed.

Milligan's Comments

Milligan has reviewed the revised the e-mail from San Mateo dated 2/6/09 as well as the checklist developed by OCTA. This deficiency is now closed.

Excerpts from FTA's Best Practices Procurement Manual BPPM §1.3.3.5

Piggybacking - If it appears that there may be an existing governmental contract which may be used for a specific need, you will first want to obtain a copy of the entire contract and review it carefully to determine if it contains the provisions required by FTA Circular 4220.1E. This is an important first step, because the requirements of the Circular apply to procurements made through inter-governmental contracts and assignments. If the contract lacks required provisions, you may be able to have it modified by the awarding Agency to include the necessary Federal clauses.

Among the steps you may want to take are the following:

1. Determine that the contract is still in effect or can be modified by the awarding Agency to permit sufficient lead time to make the required deliveries to your Agency.
2. Determine that the specifications in the existing contract will meet your needs.
3. Review the terms and conditions carefully to determine that they are acceptable to you; e.g., warranty provisions, insurance requirements, etc.
4. Determine that the requirements needed by your Agency will not be *beyond the scope of the existing contract*, creating a sole-source (noncompetitive) add-on to the contract which will have to be justified in accordance with FTA Circular 4220.1E Paragraph 9.h. Generally, if you are working with an indefinite quantity contract you should have the needed flexibility to order additional quantities without having a "new procurement" action requiring a sole-source justification.
5. Determine that the contract was awarded competitively, either through sealed bids or competitive proposals. If the contract was a sole-source award, you will have to justify a sole-source award in accordance with FTA Circular Paragraph 9.h. and your Agency's procurement procedures.
6. You are not required to do a second price analysis if one was originally performed. However, you must determine that the contract prices originally established are still fair and reasonable. Circumstances should dictate the steps to be taken. For example, if the original award was made some time ago, you may want to do a market survey and/or perform price analysis to ensure that the prices are still fair and reasonable (even if the

original award was competitive and a price analysis was performed initially). See BPPM Section 5.2 *Cost and Price Analysis* for a discussion of price analysis techniques.

7. Determine that the contractor has submitted all federally required certifications to the awarding Agency; e.g., Buy America, debarment, restrictions on lobbying, etc. See BPPM Section 4.3.3.2 *Federally Required Submissions with Offers*.
8. Work through the items in the Piggybacking Worksheet in Appendix B. 16 (and explained in Section 6.3.3 - *Joint Procurements of Rolling Stock and Piggybacking* of the BPPM). Note that some of the items on this Worksheet may overlap with items already mentioned above.
9. You should prepare a Memorandum for the Record documenting your analysis of the various items mentioned above. This will constitute the *Written Record of Procurement History* required by Paragraph 7.i. of FTA Circular 4220.1E.

Element (56) Clauses

The recipient's procurement procedures should also address the specific third party contract provisions required for each third party contract including requirements that each third party contractor extend those provisions to its subcontractors to the extent required.

[FTA C4220.1F, Ch. III, 3.a \(8\)](#)
[FTA C 4220.1F Appendix D](#)

Discussion

OCTA is deficient with respect to this element.

Thirteen contracts were noted which either did not contain all required federal clauses or the clauses did not meet federal standards:

- **OCB Reprographics** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA.
- **IMAGIC** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA.
- **Doosan Infracore America** - The termination clause did not include a provision to terminate the contract for cause.
- **Los Angeles County MTA (C81091)** - This contract was missing the following clauses:
No Federal Government Obligation to Third Parties
Federal Changes
Disadvantaged Business Enterprise
- **Los Angeles County MTA (C90584)** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA.

- **Direct Advertising Response, Inc.** - The contract did not contain a Suspension/Debarment clause or a Suspension/Debarment certification. The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA.
- **Pardess Air, Inc.** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA.
- **NTH Generation Computing, Inc.** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA. There was no signed Buy America Certification.
- **JTL Technical Services, Inc.** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA.
- **Dell Marketing, LP** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA. The contract included a Buy America clause, but there was no signed Buy America Certification.
- **CBS Outdoor, Inc.** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA. Incorporation of FTA Terms clause incorrectly references 4220.1E rather than 4220.1F.
- **Gorilla Nation Media** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA. Incorporation of FTA Terms clause was missing.
- **GFI Genfare** - The Civil Rights clause was included, but the wording did not meet federal criteria. The clause does not require compliance with antidiscrimination provisions under Title VI or ADA.

Corrective Action and Schedule

OCTA needs to ensure that appropriate FTA contract clauses are included in all FTA financed contracts and a signed Buy America Certification is secured when appropriate. The contract files reviewed contained FTA clause checklists that indicated the clauses were included in the contracts. It is recommended that the checklist should be signed by the person filling it out and also signed by a person reviewing the procurement package. A corrective action plan and schedule should be developed and submitted to FTA Region IX Office within 30 days of receipt of the draft report.

Grantee Response

Contract and purchase order templates have been updated to include the correct language.

Milligan's Comments

Milligan has reviewed the updated contract and purchase order templates developed by OCTA. Certain FTA clauses included in the purchase order template may or may not apply depending on the type or value of the procurement. For example, the clause requiring a Drug and Alcohol Policy is only applicable to transit operations contracts. Contract documents, including purchase orders should contain the clauses applicable to the specific procurement. As previously suggested in the corrective actions, a checklist for each procurement should be used to ensure that the applicable clauses are incorporated into contracts and purchase orders.

To close this deficiency, provide the FTA Region IX Office a revised checklist to address the above issues by July 1, 2010.

OTHER MATTERS

Unnecessary FTA Contract Clauses

A significant number of files reviewed contained unnecessary FTA contract clauses. Most prevalent were requirements to comply with the FTA Drug Free Workplace. One contract (GFI Genfare) contained a signed certification that the contractor would comply with the Drug Free Workplace testing requirements of 49CFR Part 655.

The inclusion of unnecessary clauses can have several potential negative impacts:

- Potential vendors may conclude that it is too costly to comply with all the requirements and choose not to participate; or
- Potential vendors may add to the normal costs associated with the procurement resulting in higher process than necessary.

OCTA pre-solicitation procurement reviews should ensure that unnecessary FTA clauses are not included in the documents.

Documentation of Approvals from the Board of Directors

OCTA's Procurement Policies and Procedures require that certain contracts are approved by the OCTA Board of Directors prior to award. As part of this review, several contract files were examined that met the threshold for Board approval prior to award. These files contained internal documents that were prepared for the Board as part of OCTA's process to obtain Board approval. However, the procurement files did not contain any documentation that approval was received from the Board.

It is recommended that OCTA include documentation of Board approval in the procurement files for projects requiring such approval.

**Appendix A:
List of Individuals Attending
Entrance or Exit
Conferences**

FTA			
<i>Name</i>	<i>Title</i>	<i>Phone#</i>	<i>Email</i>
Jeffery Davis	FTA Region IX General Engineer(participation via teleconference)	415-744-2594	Jeffrey.S.Davis@dot.gov

OCTA REPRESENTATIVES			
<i>Name</i>	<i>Title</i>	<i>Phone#</i>	<i>Email</i>
Will Kempton	Chief Executive Officer	714-560-5584	WKempton@octa.net
Virginia Abadessa	Director, Contracts Administration & Materials Management	714-560-5623	VAbadessa@octa.net
Richard Bacigalupo	Manager, Federal Relations	714-560-5901	RBacigalupo@octa.net
William Dineen, Jr.	Manager, Financial Plans, Revenue & Grants, Financial Planning & Analysis	714-560-5917	WDineen@octa.net
Kathleen M. O'Connell, CPA	Director, Internal Audit	714-560-5669	KOconnell@octa.net
Kenneth Phipps	Executive Director, Finance & Administration	714-560-5637	KPhipps@octa.net
Kennard R. Smart, Jr.	Attorney, Woodruff, Spradlin, & Smart	714-558-7000	KSmart@wss-law.com
Janet Sutter, CIA	Senior Section Manager Internal Audit	714-560-5591	JSutter@octa.net
James Kenan	Deputy Chief Executive Officer	714-560-5678	Jkenan@octa.net
Meena Katakia	Manager, Capital Projects	714-560-5694	Mkatakia@octa.net
Carolina Coppolo	Manager, Contracts & Procurement	714-560-5615	Ccoppolo@octa.net

MILLIGAN & COMPANY, LLC			
<i>Name</i>	<i>Title</i>	<i>Phone#</i>	<i>Email</i>
John Clare	Lead Reviewer	315-729-9073	Jclare2@twcny.rr.com
Habibatu Atta	Reviewer	215-496-9100	Hatta@milligancpa.com
Sandra Swiacki	Reviewer	215-496-9100	SSwiacki@milligancpa.com
William Evans	Reviewer	215-496-9100	Wevans@milligancpa.com

Appendix B: Report Summary Table

REPORT SUMMARY TABLE							
No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action
1)	Written Standards of Conduct	(FTA C 4220.1F CH III, 1.)	1	0	0	1	
2)	Contract Administration System	(FTA C 4220.1F CH. III, 3)	1	0	0	1	
3)	Written Protest Procedures	(FTA C 4220.1F CH VII, 1.)	0	1	0	1	Procedures need to be updated to include all FTA required provisions. Closed based on responses to the draft report.
4)	Prequalification System	(FTA C 4220.1F CH. VI, 1.c.)	0	0	1	1	
5)	System for Ensuring Most Efficient and Economic Purchase	(FTA C 4220.1F CH IV, 1.b)	0	1	0	1	Update procedures to include lease versus purchase alternative analysis Closed based on responses to the draft report.
6)	Procurement Policies and Procedures	(FTAC 4220.1F CH III, 3.a.)	0	1	0	1	Update policies and procedures. Provide additional information to close deficiency by July 1, 2010.
7)	Independent Cost Estimate	(FTA C 4220.1F CH. VI, 6.)	17	6	0	23	Ensure the ICE is performed prior to all procurements and included in the file. Closed based on responses to the draft report.
8)	A&E Geographic Preference	(FTA C 4220.1F CH. VI, 2.(g)(1))	1	0	22	23	
9)	Unreasonable Qualification Requirements	(FTA C 4220.1F CH. VI, 2.a.(4)(a))	18	0	5	23	
10)	Unnecessary Experience and Excessive Bonding	(FTA C 4220.1F CH. VI, 2.a.(4)(e))	15	0	8	23	
11)	Organizational Conflict of Interest	(FTA C 4220.1F CH. VI, 2.a.(4)(h))	11	0	12	23	
12)	Arbitrary Action	(FTA C 4220.1F CH. VI, 2.a.(4)(j))	23	0	0	23	
13)	Brand Name Restrictions	(FTA C 4220.1F CH. VI, 2.a.(4)(f))	16	0	7	23	
14)	Geographic Preferences	(FTA C 4220.1F CH. VI, 2.a.(4)(g))	23	0	0	23	

REPORT SUMMARY TABLE							
No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action
15)	Contract Period of Performance Limitation	(FTA C 4220.1F CH. IV, 2.e(10))	23	0	0	23	
16)	Written Procurement Selection Procedures	(FTA C 4220.1F CH. III,3.d.(1)(c))	10	0	13	23	
17)	Solicitation Prequalification Criteria	(FTA C 4220.1F CH. VI, 1.c.)	1	0	22	23	
18)	Award to Responsible Contractors	(FTA C 4220.1F CH. VI, 8.b.)	14	1	8	23	Ensure that analysis is under taken to determine that potential contractors are responsible prior to contact award Provide additional information to close deficiency by July 1, 2010.
19)	Sound and Complete Agreement	(FTA C4220.1F CH. III, 3.b)	15	0	8	23	
20)	No Splitting [Micro-purchase]	(FTA C4220.1F CH. VI, 3.a. (2)b)	0	0	23	23	
21)	Fair and Reasonable Price Determination [Micro-purchase]	(FTA C4220.1F CH. VI, 3.a.)	0	0	23	23	
22)	Micro-purchase Davis-Bacon	(FTA C 4220.1F CH. IV,2.h(5))	0	0	23	23	
23)	Price Quotations [Small Purchase]	(FTA C 4220.1F CH. VI, 3.b)	8	0	15	23	
24)	Clear, Accurate, and Complete specification	(FTA C 4220.1F CH. III, 3.a.(1)(a))	23	0	0	23	
25)	Adequate Competition – Two or More Competitors	(FTA C 4220.1F CH. VI, 3.c.(2)(b))	8	2	13	23	Ensure that an analysis is performed when a single bid or proposal is received as a result of a competitive procurement. Closed based on responses to the draft report.
26)	Firm Fixed Price [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c)	6	0	17	23	
27)	Selection on Price [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c)	6	0	17	23	
28)	Discussions Unnecessary [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c(1)(e))	6	0	17	23	
29)	Advertised/Publicized	(FTA C 4220.1F CH. VI, 3.c.(2)(a))	10	0	13	23	

REPORT SUMMARY TABLE							
No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action
30)	Adequate Solicitation	(FTA C 4220.1F CH. VI, 3.d.(2)(c))	10	0	13	23	
31)	Sufficient Bid time [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c.(2))	6	0	17	23	
32)	Bid Opening [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c.(2)(e))	6	0	17	23	
33)	Responsiveness [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c.(2)(f))	6	0	17	23	
34)	Lowest Price [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c.(2)(f))	1	0	22	23	
35)	Rejecting Bids [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c.(2)(g))	4	0	19	23	
36)	Evaluation [RFP]	(FTA C 4220.1F CH. VI, 3.d.(2)(b))	4	0	19	23	
37)	Price and Other Factors [RFP]	(FTA C 4220.1F CH. VI, 3.d.(2)(e))	4	0	19	23	
38)	Sole Source if Other Award is Infeasible	(FTA C 4220.1F CH. VI, 3.i.(1)(a))	5	0	18	23	
39)	Cost Analysis Required [Sole Source]	(FTA C 4220.1F CH. VI, 3.i.(3)(c))	3	2	18	23	Implement procedures to ensure that the cost analysis is performed for sole source procurements with dollar values under \$50,000 Closed based on responses to the draft report.
40)	Evaluation of Options	(FTA C 4220.1F CH. VI, 7.b)	3	0	20	23	
41)	Cost or Price Analysis	(FTA C 4220.1F CH. VI, 6)	15	3	5	23	Establish policies and procedures that will assure a cost or price analysis is conducted for each procurement prior to contract award. Closed based on responses to the draft report.
42)	Written Record of Procurement History	(FTA C 4220.1F CH. III, 3.d(1))	21	2	0	23	Ensure that the minimum required records are included in the procurement file. Closed based on responses to the draft report.
43)	Exercise of Options	(FTA C 4220.1F CH. V, 7.a(1))	3	0	20	23	

REPORT SUMMARY TABLE							
No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action
44)	Out of Scope Changes	(FTA C 4220.1F CH. V, 7.b(1))	4	0	19	23	
45)	Advance Payments	(FTA C 4220.1F CH. IV, 2.b(5)(b))	14	1	8	23	Ensure that OCTA does not enter into FTA funded contracts that require advance payments without obtaining FTA prior concurrence. Provide additional information to close deficiency by July 1, 2010.
46)	Progress Payments	(FTA C 4220.1F CH. IV, 2.b(5)(c))	6	1	16	23	Ensure that adequate provisions are contained in contracts that will provide security and protect OCTA's interest when making progress payments. Closed based on responses to the draft report.
47)	Time and Materials Contracts	(FTA C 4220.1F CH. VI, 2.c(2)(b))	2	0	21	23	
48)	Cost Plus Percentage of Cost	(FTA C 4220.1F CH. VI, 2.c(2)(a))	15	0	8	23	
49)	Liquidated Damages Provisions	(FTA C 4220.1F CH. IV, 2.b(6)(b)1)	6	0	17	23	
50)	Piggybacking	(FTA C 4220.1F CH. V, 7.a(2))	0	1	22	23	Ensure that all FTA required elements are completed before entering into a piggyback agreement. Closed based on responses to the draft report.
51)	Qualifications Exclude Price [A&E]	(FTA C 4220.1F CH. VI, 3.f(3)(b))	1	0	22	23	
52)	Serial Price Negotiations [A&E]	(FTA C 4220.1F CH. VI, 3.f(3)(d))	1	0	22	23	
53)	Bid Security [Construction over \$100,000]	(FTA C 4220.1F CH. IV, 2.h(1)(a))	2	0	21	23	
54)	Performance Security [Construction over \$100,000]	(FTA C 4220.1F CH. IV, 2.h(1)(b))	2	0	21	23	
55)	Payment Security [Construction over \$100,000]	(FTA C 4220.1F CH. IV, 2.h(1)(c))	2	0	21	23	

REPORT SUMMARY TABLE							
No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action
56)	Clauses	(FTA C 4220.1F Appendix D)	10	13	0	23	Ensure that appropriate FTA contract clauses are included in all FTA financed contracts. Provide additional information to close deficiency by July 1, 2010.

Appendix C:

Procurement Elements for which the Grantee is Not Deficient

SYSTEM-WIDE ELEMENTS

01) Written Standards of Conduct

Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

[FTA C4220.1F, Ch. III, 1.](#)

02) Contract Administration System

The grantee has a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

[FTA C4220.1F, Ch. III, 2.](#)

04) Prequalification System

Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

[FTA C4220.1F, Ch. VI, 1.c.](#)

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

INDIVIDUAL PROCUREMENT ELEMENTS

08) A&E Geographic Preferences

...geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

[FTA C4220.1F CH. VI, 2. \(g\)\(1\)](#)

09) Unreasonable Qualification Requirements

Example of situation restrictive of competition: *Unreasonable requirements placed on firms in order for them to qualify to do business.*

[FTA C4220.1F Ch. VI, 2.a. \(4\)\(a\)](#)

10) Unnecessary Experience and Excessive Bonding

Example of situation restrictive of competition: *Unnecessary experience and excessive bonding requirements.*

[FTA C4220.1F, Ch. VI, 2.a. \(4\)\(e\)](#)

11) Organizational Conflict of Interest (OCI)

Example of situation restrictive of competition: *Organizational conflicts of interest* [[FTA C 4220.1F Ch. VI, 2.a.\(4\)\(h\)](#)]—

- (i) *An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; [FTA C4220.1F Ch. VI, 2.a.(4)(h)(1)(a)];*
- (ii) *An organizational conflict of interest means that because of other activities, relationships, or contracts, ...a contractor's objectivity in performing the contract work is or might be otherwise impaired; [FTA C4220.1F Ch. VI, 2.a.(4)(h)(1)(a)];*
- (iii) *An organizational conflict of interest means that because of other activities, relationships, or contracts, ... a contractor has an unfair competitive advantage. [FTA C4220.1F Ch. VI, 2.a.(4)(h)(1)(b)]*

12) Arbitrary Action

The grantee shall use no arbitrary action in the procurement process. (An example of arbitrary action is when award is made to other than the contractor who most satisfied all the grantee's requirements as specified in the solicitation and as evaluated by staff.)

[FTA C4220.1F Ch. VI, 2.a.\(4\)\(j\)](#)

13) Brand Name Restrictions

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

[FTA C4220.1F Ch. VI, 2.a.\(4\)\(f\)](#)

14) Geographic Preference

Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

FTA C4220.1F Ch. VI, 2.a. (4)(g)

15) Contract Term Limitation

Grantee shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of property, revenue and construction, etc.) should be based on sound business judgment.

FTA C4220.1F Ch. IV, 2.e (10)

16) Written Procurement Selection Procedures

The grantee shall have written selection procedures for procurement transactions. All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured, requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

FTA C4220.1F Ch. III,3. d.(1)(c)

17) Solicitation Prequalification Criteria

- (a) *Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current... [FTA C4220.1F, Ch. VI, 1.c.(1).];*
- (b) *Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services ...include enough qualified sources to ensure maximum full and open competition [FTA C4220.1F, Ch. VI, 1.c.(2)];*
- (c) *Grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date. [FTA C4220.1F, Ch. VI, 1.c.(3)];*

19) Sound and Complete Agreement

All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts should include remedies for breach of contract and provisions covering termination for cause and convenience.

FTA C4220.1F Ch. III, 3.b

23) Price Quotations [Small Purchase]

If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

FTA C4220.1F Ch. VI, 3.b

24) Clear, Accurate, and Complete Specification

A complete, adequate, and realistic specification or purchase description should be available and included any specifications and pertinent attachments which define the items or services sought in order for the bidder to properly respond.

FTA C4220.1F Ch. III, 3.a.(1)(a)

26) Firm Fixed Price [Sealed Bid]

...the procurement lends itself to a firm fixed price contract.

FTA C4220.1F Ch. VI, 3.c

27) Selection on Price [Sealed Bid]

The selection of the successful bidder should be made principally on the basis of price.

FTA C4220.1F Ch. VI, 3.c

28) Discussions Unnecessary [Sealed Bid]

No discussion with bidders is needed.

FTA C4220.1F Ch. VI, 3.c.(1)(e)

29) Advertised/Publicized [Sealed Bid]

Procurement By Sealed Bids/Invitation For Bid (IFB)

2) If this procurement method is used, the following requirements apply:

(a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;

FTA C4220.1F, Ch. VI, 3.c. (2)(a)

Procurement By Competitive Proposal/Request for Proposals (RFP)

This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

(1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;

FTA C4220.1F, Ch. VI, 3.c. (2)(a)

30) Adequate Number of Sources Solicited

The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers...

FTA C4220.1F Ch. VI, 3.d.(2)(c)

31) Sufficient Bid Time [Sealed Bid]

If this procurement method is used, ...sufficient time to prepare bids prior to the date set for opening the bids will be provided.

FTA C4220.1F Ch. VI, 3.c.(2)

32) Bid Opening [Sealed Bid]

If this procurement methods is used, ...[a]ll bids will be publicly opened at the time and place described in the invitation for bids.

[FTA C4220.1F Ch. VI, 3.c\(2\)\(e\)](#)

33) Responsiveness [Sealed Bid]

If this procurement method is used, ...[a] firm fixed-price contract award will be made in writing to the lowest responsive ...bidder. [FTA C4220.1F Ch. VI, 3.c(2)(f)]

- (i) *When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;*
- (ii) *Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.*

34) Lowest Price [Sealed Bid]

If this procurement method is used, ...[a] firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder.

[FTA C4220.1F Ch. VI, 3.c\(2\)\(f\)](#)

35) Rejecting Bids [Sealed Bid]

Any or all bids may be rejected if there is a sound documented business reason.

[FTA C4220.1F Ch. VI, 3.c\(2\)\(g\)](#)

36) Evaluation

Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting the awardees.

[FTA C4220.1F Ch. VI, 3.d\(2\)\(b\)](#)

37) Price and Other Factors (RFP)

If this procurement method is used the following requirements apply: ...awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered.

[FTA C4220.1F Ch. VI, 3.d\(2\)\(e\)](#)

38) Sole Source if Other Award is Infeasible

- (a) *Sole Source procurements are accomplished ... after solicitation of a number of sources, competition is determined inadequate. [FTA C 4220.1F Ch. VI, 3.i(1)(a)]*
- (b) *Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies [FTA C 4220.1F Ch. VI, 3.i(1)]:*

- (i) *The item is available only from a single source [FTA C 4220.1F Ch. VI, 3.i(1)(b)]; or*
- (ii) *The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation [FTA C 4220.1F Ch. VI, 3.i(1)(c)] or*
- (iii) *FTA authorizes noncompetitive negotiations [FTA C 4220.1F Ch. VI, 3.i(1)(e)]; or*
- (iv) *After solicitation of a number of sources, competition is determined inadequate FTA C 4220.1F Ch. VI, 3.i(2)]; or*
- (v) *The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers. [FTA C 4220.1F Ch. VI, 3.i(1)(d)]*

40) Evaluation of Options

The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

FTA C4220.1F Ch. VI, 7.b

43) Exercise of Options

If a grantees chooses to use them, options must adhere to the terms and conditions of the option stated in the contract and determine that the option price was better than prices available in the market or that the option was a more advantageous offer at the time the option was exercised.

FTA C4220.1F Ch. V, 7.a(1)

44) Out of Scope Changes

Sole source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with FTA requirements for sole source procurements.

FTA C4220.1F, Ch. V, 7.b (1)

47) Time and Materials Contracts

Grantees will use time and materials type contracts only after the grantee has determined that no other type of contract is suitable and if the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

FTA C4220.1F CH. VI, 2.c(2)(b)

48) Cost Plus Percentage of Cost

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

FTA C4220.1F Ch. VI, 2.c(2)(a)

49) Liquidated Damages Provisions

A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

FTA C4220.1F Ch. IV, 2.b(6)(b)1

51) Qualifications Exclude Price [A&E]

Qualifications-based competitive proposal procedures require that an offeror's qualifications be evaluated and that price be excluded as a factor.

FTA C4220.1F Ch. VI, 3.f(3)(b))

52) Serial Price Negotiations [A&E]

Qualifications-based competitive proposal procedures require that negotiations be conducted with only the most qualified offeror and, failing an agreement on price, negotiate with the next most qualified offeror until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

FTA C4220.1F Ch. VI, 3.f(3)(d)

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

FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

- (a) *A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. [FTA C4220.1F Ch. IV, 2.h(1)(a)]*

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

FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

- (a) *A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. [FTA C4220.1F Ch. IV, 2.h(1)(a)]*

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

FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

- (b) *A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons*

supplying labor and material in the execution of the work provided for in the contract.
[FTA C4220.1F Ch. IV, 2.h(1)(c)]

- (1) *Payment bond amounts... fifty percent of the contract price if the contract price is not more than \$1 million [FTA C4220.1F Ch. IV, 2.h(1)(c)1];*
- (2) *Payment bond amounts... forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million [FTA C4220.1F Ch. IV, 2.h(1)(c)2]; or*
- (3) *Payment bond amounts... two and a half million dollars if the contract price is more than \$5 million. [FTA C4220.1F Ch. IV, 2.h(1)(c)3]*
- (4) *A grantee may seek FTA approval of its bonding policy and requirements if they do not comply with these criteria. [FTA C4220.1F Ch. IV, 2.h(1)(e)]*

Appendix D:

Procurement Elements Determined to be Not Applicable

20) No Splitting

There should be ...no splitting of procurements to avoid competition.

[FTA C4220.1F Ch. VI, 3.a.\(2\)b](#)

21) Fair and Reasonable Price Determination (Micro-Purchase)

Procurements by micro-purchase are those purchases under \$2,500. Purchases below that threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable... and how this determination was derived.

[\(FTA C4220.1F CH. VI, 3.a.\)](#)

22) Micro-Purchase Davis Bacon

Micro-purchases are those purchases under \$2,500... The Davis-Bacon Act applies to construction contracts between \$2,000 and \$2,500.

[\(FTA C 4220.1F CH. IV,2.h\(5\)\)](#)



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CHIEF EXECUTIVE OFFICE

*Will Kempton
Chief Executive Officer*

May 17, 2010

**Nadeem S. Tahir, P.E., CCM.
U.S.D.O.T. Federal Transit Administration, Region IX
201 Mission Street, Ste 1650
San Francisco, CA 94105**

**Subject: Orange County Transportation Authority
Procurement System Review**

Dear Mr. Tahir:

Attached are proposed corrective actions the Orange County Transportation Authority (OCTA) will implement in response to recommendations made in OCTA's recent Procurement System Review performed by Milligan & Company.

OCTA welcomes these types of reviews, as they provide our organization with the opportunity to strengthen policies, procedures and compliance with federal requirements. While it appears, based on the results of the review, that OCTA's procurement system is sound and generally complies with all FTA requirements, we have taken immediate action to modify written policies, procedures and practices to better reflect these requirements.

If you have any questions regarding any of the proposed corrective actions, please contact Kathleen O'Connell, Director of Internal Audit at (714) 560-5669 or Virginia Abadessa, Director, CAMM at (714) 560-5623. Once the Procurement System Review report has been finalized, OCTA will incorporate the changes into the procurement policies and procedures manual.

Sincerely,


**Will Kempton
Chief Executive Officer**

WK/va

C: Jeffery Davis

System Wide Elements Summary Sheet Orange County Transportation Authority

Element	Topic	FTA Comments	OCTA Response
3)	Written Protest Procedures	<p>OCTA Procurement Policies and Procedures, Pgs 20-242</p> <p>Note: Pg 23(g) does not state that the protestor must exhaust all administrative remedies with OCTA before pursuing a protest with FTA</p> <p>Policy does not state that OCTA will keep FTA informed about the status of the protest.</p>	Policies and Procedures manual updated to add required FTA notification. (Pages 1-5)
5)	System for Ensuring Most Efficient and Economic Purchase	No apparent procedure to analyze lease vs. purchase alternatives	A policy and procedure have been developed. (Pages 6-8)
6)	Procurement Policies and Procedures	<p>Time and Materials type contracts: no policy</p> <p>Tag-ons: no policy</p> <p>Unreasonable requirements placed on firms: not specifically prohibited in document</p> <p>Micro-purchase requirements: no policy on splitting</p> <p>Small purchases: policy does not require determination that price is fair and reasonable</p> <p>IFBs: Policy does not require documentation of sound business reason if rejecting any and all bids</p> <p>RFPs: Procedures do not presently include language regarding "best value" selection method of procurement</p> <p>Design-Build: no policy</p> <p>Cost principles consistent with Federal cost principles: no reference to this found in document</p> <p>Cost plus percentage of cost type contract: no policy found</p> <p>Advance payments: no prohibition found</p> <p>Progress payments: no requirement for adequate security</p> <p>Liquidated damages: no policy found</p>	<p>A policy and procedure have been developed. (Pages 9-11)</p> <p>A policy and procedure have been developed. (Pages 12-14)</p> <p>Prohibition has been added to policies and procedures. (Pages 15-19)</p> <p>A policy and procedure have been developed. (Pages 20-22)</p> <p>Policy has been updated to include requirement. (Pages 23-24)</p> <p>Policy has been updated to include requirement. (Pages 25-26).</p> <p>A policy and procedure have been updated to include requirement. (Pages 27-29)</p> <p>Policy has been added. (Pages 30-31)</p> <p>Procedure has been updated to include requirement. (Pages 32-33).</p> <p>A policy and procedure have been developed. (Pages 34-36)</p> <p>A policy and procedure have been developed to include requirement. (Pages 37-39)</p> <p>A policy and procedure have been developed to include requirement (Pages 40-43).</p> <p>A policy and procedure have been developed to include requirement. (Pages 44-46)</p>

continued

**System Wide Elements Summary Sheet
Orange County Transportation Authority**

Element	Topic	FTA Comments	OCTA Response
6)	Procurement Policies and Procedures <i>(continued)</i>	<p>Small purchases – breach of contract: no requirement found</p> <p>Contracts greater than \$10,000: no termination requirements found</p> <p>Revenue contracts: no policy found</p>	<p>Required Federal clauses chart added to procurement manual. (Pages 47-49)</p> <p>Required Federal clauses chart added to procurement manual. (Pages 47-49)</p> <p>A policy has been added. (Pages 50-51)</p>

**Contract File Summary Sheet
Orange County Transportation Authority**

Element	Topic	FTA Comments	OCTA Response
7)	Independent Cost Estimate	Lack of ICE; inadequate ICE	ICE form has been developed. (Pages 52-55)
18)	Award to Responsible Contractors	Board award not documented; no determination found in files	Procedures updated to require that documentation be made. (Pages 56-57)
25	Adequate Competition – Two or More Competitors	Analysis lacking proper determination of competitive environment	Policies and Procedures updated to require determination of competitive environment. (Pages 58-62)
39)	Cost Analysis Required (Sole Source)	No documentation of cost analysis	Policies and Procedures do require this cost analysis – checklists developed to assist staff. (Pages 63-65)
41)	Cost or Price Analysis	Lack of adequate cost price analysis	Procedures updated to include cost price analysis. (Pages 66-67)
42)	Written Record of Procurement History	No documentation for method of procurement or selection of contract type	Procurement plan revised to add information. (Pages 68-71)
45)	Advance Payments	Terms and conditions require monthly invoice in advance; no FTA approval	Policies and Procedures revised to incorporate. (Pages 72-74)
46)	Progress Payments	No provision granting title to goods paid for	Policies and Procedures revised to incorporate. (Pages 75-78)
50)	Piggybacking	Lack of assignment letter from original purchaser	E-mail from San Mateo agreement to the assignment allocated; Checklist developed. (Pages 79-82)
56)	Clauses	Civil rights clause does not contain provision for Title VI and ADA. No termination for cause clause. No federal government obligation to third parties. Federal changes, Suspension Debarment/Certificate, no Buy America certificate. Improper incorporation of FTA terms clause.	Contract and purchase order templates updated to include correct language. Contract clauses: <ul style="list-style-type: none"> - Termination - Civil Rights - Debarment (Pages 83-91) Purchase Order clauses (Pages 92-105)

Protest Changes

Policy

Procedures

Element 3

CAMM Policy Manual

10. Review Levels
 - a) Upon receipt the CAMM Management shall promptly consider the protest and may give notice of the protest and its basis to other persons including bidders/candidates involved in or affected by the protest.
 - b) The CAMM Management shall notify the protester in writing within five days that the protest has been received and is undergoing review.
 - c) If the procurement is federally funded, the Authority shall notify FTA in writing of the receipt of the protest and keep FTA informed about the status of the protest.
 - (1) This written notification shall be sent within ten (10) days from receipt of the protest.
 - d) The CAMM Management shall review all material submitted with the initial protest.
 - e) No additional material shall be accepted for consideration during the protest review unless specifically requested by the CAMM Management.
 - f) If additional material is requested, it shall be submitted by the requested date.
 - g) The CAMM Management will render a decision in writing to the protester within thirty (30) days after receipt of the protest.
11. Chief Executive Officer Review
 - a) In the event of an adverse decision by the CAMM Management for Board of Directors approved procurements, the protester may submit his/her protest in writing to the Chief Executive Officer no later than ten (10) days after the date the CAMM Management has rendered a decision.
 - b) The protester shall submit only the information previously submitted to the CAMM Management as well as a copy of the CAMM Management's decision.
 - c) The Chief Executive Officer shall not consider any additional material that was not submitted to the CAMM Management.
 - d) The Chief Executive Officer shall notify the protester in writing within five (5) days that the protest has been received and is undergoing review.
 - e) The Chief Executive Officer shall render in writing a final decision within thirty (30) days after receipt of the protest.
 - f) The Chief Executive Officer may delegate his/her authority and responsibility to a designee.
12. Board of Directors Review
 - a) In the event of an adverse decision by the Chief Executive Officer for Board approved procurements, the protester may request in writing a review by the Authority's Board of Directors.
 - (1) This shall be subject to the requirement that the protest is based on information not previously presented to the Board of Directors.

CAMM Policy Manual

- b) To request a review, the protester shall submit only the documentation previously submitted to the CAMM Management and the Chief Executive Officer, as well as the decisions previously rendered, to the Clerk of the Board within five (5) days of the Chief Executive Officer's decision.
 - c) The Board of Directors shall not consider any data not submitted to the CAMM Management and the Chief Executive Officer.
 - d) Upon receipt of request for review by the Board of Directors of the protest, the Clerk of the Board shall agenda a review for a regularly scheduled Board meeting.
 - e) The CAMM Management shall notify the protester in writing of the scheduled date of review of the Board of Directors.
 - f) At the Board meeting, the protester may give an oral presentation of the information previously provided in writing.
 - (1) At the conclusion of the presentation, the Board of Directors shall make a determination.
 - (2) The decision of the Board of Directors shall be final and there shall be no further administrative recourse.
 - (3) The CAMM Management shall notify the protester in writing of the Board's action.
 - g) If the procurement is federally funded, the protester may pursue a remedy through the ~~current~~ FTA ~~Circular 42201.F.~~ ~~(See Forms.)~~ once all administrative remedies have been exhausted.
 - h) Execution of any proposed agreement shall be delayed pending the resolution of the protest, unless one or more of the following conditions is present:
 - (1) The items or services being procured are urgently required.
 - (2) Delivery or performance will be unduly delayed by failure to make award promptly.
 - (3) Failure to make prompt award will otherwise cause undue harm to the Authority.
13. Protest Remedies
- a) There shall be no Limitation on Remedies selected by Authority.
 - (1) Nothing contained herein shall be construed to neither act as a limitation on the Authority's choice of remedies nor confer any right upon any interested party to a remedy.
 - b) In determining the appropriate remedy, Authority shall consider all the circumstances surrounding solicitation or contract selection and/or award, which shall include:
 - (a) The seriousness of any deficiency found to exist in the contracting process.
 - (b) The effect of the action of the competitive process
 - (c) Any urgency surrounding the contract requirement
 - (d) The effect that implementing the remedy will have on the Authority's overall ability to accomplish its mission

CAMM Procedures

- b) The solicitation number and the project description
- c) A statement of the grounds for protest and all supporting documentation
- d) The grounds for protest must be fully supported
- e) The resolution to the protest desired from the Authority
- f) The following address if going through the US Postal service:

Orange County Transportation Authority
Contracts Administration and
Materials Management Department
550 South Main Street, PO Box 14184
Orange, California 92683-1584
Attention: BID PROTEST

- g) The following address if delivered in person or by means other than the US Postal service:

Orange County Transportation Authority
Contracts Administration and
Materials Management Department
600 South Main Street, 4th Floor
Orange, California 92868
Attention: BID PROTEST

- 3. A copy of the protest will be distributed to appropriate parties which may include Legal, PM, and Executive Management.
- 4. CAMM Management will be the initial party to determine a fair review process for all vendors who file a protest. The CA will review the protest and prepare a receipt of protest response letter to be signed by the Director of CAMM and sent to the vendor. This letter should be sent to the vendor no later than three (3) business days from receipt of protest.
- 5. The CA will review the protest and prepare a written summary and submit to their supervisor for review within seven (7) days from the receipt of the protest.
- 6. If the procurement is federally funded the following shall apply:
 - a) For FTA procurements, CAMM Management will notify the Grants Department and request that they notify FTA of the protest and keep FTA informed about the status of the protest.
 - b) For FHWA funded procurements, CAMM Management will notify CALTRANS of protest.
- 7. CAMM Management will review the summary prepared by the CA and all material submitted with the protest. The Director of CAMM shall issue a decision in writing on the merits of the protest.
- 8. Chief Executive Officer
 - a) In the event of an adverse decision by the Director of CAMM for Board of Directors approved procurements, the protester may submit his/her protest in writing to the Chief Executive Officer no later than ten

CAMM Procedures

(10) days after the date the Director of CAMM has rendered a decision.

(1) To expedite handling, the address should include "Attention: Bid Protest."

b) The protester will submit only the information previously submitted to CAMM as well as a copy of the Director of CAMM's decision.

c) The Chief Executive Officer will notify the protester in writing within five (5) days that the protest has been received and is undergoing review, and will render in writing a final decision within thirty days after receipt of the protest.

9. Authority's Board of Directors Review

a) In the event of an adverse decision by the Chief Executive Officer of Board of Directors approved procurements, the protester may request in writing a review by the Authority's Board of Directors.

b) To request a review, the protester shall submit only the documentation previously submitted to CAMM and the Chief Executive Officer, as well as the decisions previously rendered, to the Clerk of the Board within five days of the Chief Executive Officer's decision.

c) Upon receipt of request for review by the Board of Directors of the protest, the Clerk of the Board shall agenda a review for a regularly scheduled Board meeting.

d) The CA shall notify the protester in writing of the scheduled date of review of the Board of Directors.

e) At the Board meeting, the protester may give an oral presentation of the information previously provided in writing.

f) Staff will present its prior determinations and the reason for the determinations.

g) The Board of Directors may ask questions of both staff and the protester.

(1) At the conclusion of the question and answer session, the Board of Directors shall make a determination

(2) The decision of the Board of Directors should be final and there should be no further administrative recourse

(3) The CA will notify the protester in writing of the Board's action.

h) If the procurement is federally funded, the protester may pursue a remedy through the FTA ~~Circular-42201F~~ once all administrative remedies have been exhausted.

i) Execution of any proposed agreement should be delayed pending the resolution of the protest, except under special circumstances.

10. Protest Remedies

a) In determining the appropriate remedy, Authority should consider all the circumstances surrounding solicitation or contract selection and/or award.

b) If the Authority determines that the award or proposed award was not made in accordance with the applicable Authority statutes, regulations,

Lease vs. Buy

Policy

Procedures

Element 5

VII. Other Procurement Types

A. Fixed Asset Purchases Policy

1. Fixed Assets are those with unit costs greater than \$5,000 and a useful life of at least three years.
2. If the procurement is less than \$50,000 the Informal Procurement Process shall be used.
3. If the procurement is \$50,000 or greater, a formal Invitation for Bid (IFB) shall be used.
4. In either case, the award is made to the lowest responsive and responsible bidder.
5. Board approval of vendor selection is required for budgeted procurements greater than \$250,000.
6. In order for the Authority to determine the best value when purchasing fixed assets, a lease vs. purchase analysis must be performed prior to making the final procurement decision.

B. Bus Inventory Purchases Policy

1. CAMM's highest priority is to ensure that buses are available to be placed in revenue service. Because of this, routine bus parts, fluids and inventory items, if purchased using a competitive process, do not require Board approval but can be approved by CAMM Management in any dollar amount.
2. Bus parts with a unit price at \$2,500 or less shall be purchased using the micro-purchase procedures. Bus parts with a unit price greater than \$2,500 shall be purchased using the Informal Procurement procedures.
3. Bus Downs are situations when a bus is unable to be assigned into revenue service because of a mechanical problem. The buyer has four (4) hours to find the required part(s) and place the order. The selection is made based on who can deliver the part the quickest.
4. Inventory Amendments when the original purchase order is competitively bid or is a sole source, can be made to the purchase order regardless of the dollar amount by approval of CAMM Management

C. Public Works/Construction Services Policy

1. The Authority is required to follow California Public Contract code as related to public works contracting.
2. A Public Works contract is an agreement for erection, construction, alteration, repair or improvement of any public structure, building, road, or other public improvement of any kind.
3. Public works and construction projects shall be awarded through a competitive IFB process and must be awarded to the lowest responsive and

IV. Other Procurement Types

A. Fixed Asset Purchases Procedures

1. Fixed Assets are those with unit costs greater than \$5,000 and a useful life of at least three years.
2. If the procurement is less than \$50,000 the Informal Bid Process shall be used. (See Procedures for Informal Competitive Procurements)
3. If the procurement is \$50,000 or greater, the formal IFB process shall be used. (See Procedures for Formal competitive Procurements)
4. The award is made to the lowest responsive, responsible bidder
5. In order for the Authority to obtain the best value, the Authority shall review lease versus purchase alternatives when acquiring certain goods and equipment. The CA shall require that the PM make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on market conditions and based on the expected useful service life of the asset. The PM shall provide this analysis to the CA, and the CA will include it in the procurement file.
6. In determining whether the lease of equipment is feasible, the following factors must be considered:
 - a. Estimated length of the period the equipment is required and the amount of time of actual equipment usage
 - b. Financial and operating advantages of alternative types and makes of equipment
 - c. Total rent cost for the estimated period of use
 - d. Net purchase price if acquired by purchase
 - e. Transportation and installation costs
 - f. Maintenance and other service costs
 - g. Potential use of the equipment
 - h. Trade-in or salvage value
 - i. Imputed interest costs

B. Bus Inventory Purchase Procedures

1. Recommended Orders are routine requirements that are generated from Ellipse when the minimum quantity level for the particular inventory item falls below the pre-determined number of units. If the requirement is not for a sole source item, the buyer will solicit bids on CAMMNET, using the Request for Quotation method. Solicitations posted on CAMMNET shall remain open for no less than 2 days prior to making the award. If the requisition has fewer than 20 items, the solicitation may be posted in CAMMNET for less than two days.
 - a) The evaluation is based on a 60/40 split, with 60% for price and 40% for estimated time of arrival.
 - b) Inventory items must be bid using the Original Equipment Manufacturer's Brand or Approved Equal Brand.

Time and Material Guidance

Policy

Procedures

Element 6, No. 1

B. Competitive Negotiated Procurements – Request for Proposal (RFP) Policy

1. The RFP process is a competitive proposal method used when proposals can be solicited from an adequate number of qualified vendors. Proposals are evaluated on a number of factors including price, which are identified in the solicitation along with their relative importance. Award is made to the responsible firm whose proposal is most advantageous to OCTA with price and other factors considered. The Director of CAMM has the authority to cancel a solicitation. A cancellation notice will be provided.
2. The requesting department must always initiate a requisition for services, scope of work, and an independent cost estimate prior to the start of the RFP process. Imposing unreasonable requirements on proposers shall be prohibited.
3. The following conditions must exist in order to use a competitive negotiated procurement method:
 - a) There must be a complete and adequate scope of work which would allow for competition.
 - b) The competitive negotiated procurement process does not require award to the lowest bidder.
 - c) The contract award amount, whether a firm fixed price or cost reimbursement, is determined based on the original vendor proposal, which may be changed using a Best and Final Offer (BAFO) and/or through negotiation between the two parties.
 - (1) Discussions or negotiations may also be used to address technical requirements.
 - d) If time and material contract is to be used, a determination must be made in writing that no other type of contract is suitable. The determination must demonstrate that it is not possible at the time of contract execution to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
 - e) Cost plus a percentage of cost type contract shall be prohibited nor shall a cost plus percentage of construction cost type contract be used in pricing Architectural/Engineering contracts.
4. If the requirement is for an Architectural/Engineering and/or Professional service, the following shall apply:
 - a) Architectural and Engineering services must be competitively solicited and evaluated based solely on technical merit. Cost is not an evaluated factor.
 - b) Board authorization shall be required for release of RFPs on non-budgeted projects greater than \$25,000 but not on specifically budgeted projects.
 - c) Board approval of selection of the top ranked firms shall be required for budgeted procurements greater than \$250,000 and non-budgeted projects greater than \$25,000.

CAMM Procedures

- (4) Consultants are not permitted to assist in the writing of the scope of work on projects for which they will bid
 - (5) Notify CA of any approved equals and any vendor contacts
 - (6) Ensure the description on the request is consistent with budget including the line item
 - b) Enter requisition in Ellipse
 - c) Prepare ICE and submit to CAMM with requisition
4. CAMM Senior Financial Analyst will review the following:
- a) Accounting codes and budget page reference
 - b) Eligibility and availability of funds
 - c) Grant levels and requirements
 - d) Return requisition to requesting department if changes are necessary
5. CAMM will always call the requesting department before proceeding with the procurement process at this point. The CA shall contact the requester within two (2) business days after receipt of requisition to notify they have been assigned the requisition and to begin the Procurement Plan.
6. Board approval is required to release an RFP if:
- a) Requisition is in excess of \$1,000,000, for this initial term or
 - b) Unbudgeted and over \$25,000
 - (1) If Board approval is required, the requesting department will prepare a Staff Report which should include:
 - (a) Reason for the request of the Board of Directors' approval
 - (b) Problem or issue to be solved
 - (c) Why the project is necessary
 - (d) End product of the project
 - (e) Description of the services or goods to be performed or equipment to be procured
 - (f) Identify budget information
 - (2) The CA will prepare the Procurement Approach section of the Staff Report and draft RFP to be reviewed by CAMM Management and included in the Staff Report. *If time and material contract is to be used, a determination must be made in writing that no other type of contract is suitable. The determination must demonstrate that it is not possible at the time of contract execution to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.*
7. The Staff Report will be reviewed and approved by managers and executive division directors
8. CAMM's Responsibilities for Preparation of RFP
- a) CAMM's primary responsibilities for preparation of the RFP shall be:
 - (1) Determination of the contract type
 - (2) Compliance with funding source requirements
 - (a) FTA funded projects require compliance with FTA

Tag-Ons

Policy

Procedures

Element 6, No. 2

CAMM Policy Manual

13. **Contract Administration**
The CA and the Project Manager shall be responsible for monitoring and reviewing the contract to determine whether the terms and conditions are being met.
14. **Formal Contract Amendments Policy**
 - a) Amendments for contracts or purchase orders which amount to fifteen (15) percent or less of the total original contract amount or \$250,000, whichever is less, do not require Board approval.
 - b) For equipment contracts, amendments for five (5) percent or less of the total contract amount or \$250,000, whichever is less, do not require Board approval.
 - c) The Board of Directors may authorize changes or additions in the work being performed under construction public works contracts.
 - (1) Any increase to the contract's maximum obligation for any change or addition to the work ordered shall:
 - (a) Not exceed \$5,000 when the total amount of the original contract does not exceed \$50,000
 - (b) Not exceed ten percent of the amount of the original contract that is greater than \$50,000, but does not exceed \$250,000
 - (c) Not exceed \$25,000, plus five (5) percent of the original contract that exceeds \$250,000
 - (d) Change Orders in excess of \$150,000 must be approved by the Board.
 - d) The Board must approve all contracts with option terms that if the option term is exercised would result in a contract amount greater than \$250,000. When this occurs, the Board shall approve the initial term plus all individual options.
 - e) A significant change to the scope of work that deviates from the original purpose of the scope of work that is so extensive that, in effect, the contractor is performing different work from that described in the original contract is considered a cardinal change and will be viewed as a sole source.

C. Contract Task Order Policy

1. Contract Task Order (CTO) is used to provide an opportunity under master agreements to contract on an on-call basis (sharing one pool of funds).
2. CTOs shall require review by the CAMM Section Manager and Project Manager and review and signature from CAMM Management and General Counsel.
3. Master CTO agreements shall be issued to the on-call firms, and as the need for the particular service arises during the term of the agreements, CTOs shall be issued.
4. Master CTO agreements for a particular service may only be issued for the

CAMM Procedures

1. Any change or modification to the existing contract must be finalized by issuing an amendment to the Agreement. An amendment is used to make negotiated changes to the contract scope of work, price, delivery schedule or any other contract term. A contract change that is outside the “scope of the Agreement” or is a significant change that deviates extensively from the original purpose of the scope of work is considered a Sole Source procurement. For federally funded contracts, the FTA Circular 4220.1F requires that the CA and/or Project Manager perform a cost or price analysis before executing the amendment. The method and degree of analysis depends on the particular procurement situation, but as a starting point, an independent cost estimate must be prepared by the CA and/or Project Manager before receiving the bid or proposal for the amendment.
2. The Project Manager develops the amended scope of work and submits it to the CA along with a requisition and independent cost estimate.
3. The CA shall review the amended scope of work to ensure that the work required is within the original intent of the scope of work. If the work is beyond the original scope of work with regard to nature of work or the amount of effort, the CA shall meet with the Project Manager to discuss. In some cases, the amended scope will need to be adjusted downward or issued as a new procurement.
4. If the contract is federally funded, the amended scope of work must be sent to the DBE Officer for determination of a change to the DBE goal.
5. The CA shall contact the contractor and request a proposal or bid for the amended scope of work.
6. The CA shall review the proposal for the amendment with the Project Manager and determine if negotiations are necessary. If negotiations are necessary, the CA and Project Manager shall determine the negotiation strategy and meet with the contractor to conduct the negotiations. The CA shall prepare a negotiations memo at the conclusion of the meeting.
7. If the amendment requires Board approval, the CA shall prepare the “Procurement Approach” to the Staff Report and submit to the Project Manager for inclusion in the report. Prior to submitting to the Project Manager, the CA shall gain approval on the Procurement Approach section from CAMM management.
8. After Board approval is obtained, the CA shall prepare the written amendment document and submit it to the section manager for review. Once approved, the CA shall route the amendment for signatures.
9. For no cost time extensions, the Project Manager shall issue a requisition. The CA will prepare the amendment for review and approval by the CAMM section manager. Once approved, the CA shall route the amendment for signatures.

Unreasonable Requirements

Policy

Procedures

Element 6, No. 3

CAMM Policy Manual

B. Independent Cost Estimate Policy

1. The requesting department shall provide an Independent Cost Estimate (ICE) with the procurement requisition, to assure that the scope of work is sufficiently funded to accomplish the tasks being requested or level of effort.
2. Departments shall obtain such estimates from sources, including but not limited to, published competitive prices, results of competitive procurements or estimates by Project Managers.

C. General Rules for Scopes of Work and Specifications Policy

1. The following general rules shall apply to scopes of work and specifications:
 - a) Provide a clear and concise Scope of Work and not impose unreasonable requirements.
 - b) Specifications and Scopes of Work shall identify all characteristics and specific tasks and functions of the items or services to be procured, and meet the Authority's requirements.
 - c) Whenever possible, the expected quality of services to be provided or the performance characteristics of the item shall be specified.
 - d) The requestor shall identify all optional items, and the solicitation documents shall set forth the expected needs and the manner in which the related bid prices will be considered.
 - e) Brand name specifications must be accompanied by an explanation that clearly indicates that the specification is not intended to be restrictive.
 - f) The salient characteristics represented by the brand names shall be identified to allow for evaluation of possible "or equal" material.
 - g) Because standard specifications and requirements allow for more efficient operations and result in lower prices, they shall be used wherever suitable.
 - h) Industry, federal, state and local government specifications and requirements can be used.
2. Consultants are prohibited from writing the Scope of Work or assisting in the development or writing the Scope of Work in which they may bid.

D. Bonding Requirements Policy

1. It shall be the responsibility of the CAMM Management to ensure that bonding requirements are followed and applied impartially, to comply with state and federal requirements, and to protect the interests of the Authority.
2. The following are required by the State of California for all Public Works projects in excess of \$25,000:
 - a) Bid guarantees or securities
 - b) Performance bonds
 - c) Payment bonds

CAMM Policy Manual

3. The requesting department shall initiate the process by submitting a requisition, Specification or Statement of Work and an ICE.
4. The IFB packet shall include:
 - a) General instructions to the bidders concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information
 - b) A blank bid form used by the bidder to summarize the bid and that bind the bidder to a legal offer
 - c) Required forms to be completed by the bidder and submitted with the IFB
 - d) Documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidder to properly respond to the IFB.
Imposing unreasonable requirements on bidders shall be prohibited.
5. A CAMM Manager will review the IFB package prior to its release to the public.
6. If the procurement has a value greater than \$1,000,000, Board approval is required prior to releasing the IFB. The requesting department and the CA will prepare a staff report.
 - a) Draft IFBs shall be sent to the Clerk of the Board's office which will be available for review by Board members or the public.
7. After the Board approves the release of the IFB, a public notice must be published in a newspaper of general circulation for two (2) consecutive weeks prior to the bid closing date.
 - a) The public notice shall include:
 - (1) General description of the service or goods to be purchased
 - (2) Directions on how to obtain the IFB
 - (3) Bid submittal date and time
 - (4) Location in which bids will be publicly opened
 - (5) Applicable FTA clauses per FTA Circular 4220.1.F
 - (6) DBE goal percentage if federally funded
8. CAMM shall post the IFB on CAMMNET
 - a) The CA may issue a solicitation without posting it on CAMMNET, with prior approval by the CAMM Management.
9. Addenda to the IFB package may be issued only by CA.
 - a) Addenda must be issued in writing.
 - b) All addenda will be posted on CAMMNET.
 - (1) Those firms who are currently registered on CAMMNET and have identified the appropriate commodity codes shall be notified electronically of the Addenda release.
 - (2) If the solicitation was not posted on CAMMNET, the addenda shall be mailed to those firms who received the original solicitation.

B. Competitive Negotiated Procurements – Request for Proposal (RFP) Policy

1. The RFP process is a competitive proposal method used when proposals can be solicited from an adequate number of qualified vendors. Proposals are evaluated on a number of factors including price, which are identified in the solicitation along with their relative importance. Award is made to the responsible firm whose proposal is most advantageous to OCTA with price and other factors considered. The Director of CAMM has the authority to cancel a solicitation. A cancellation notice will be provided.
2. The requesting department must always initiate a requisition for services, scope of work, and an independent cost estimate prior to the start of the RFP process. **Imposing unreasonable requirements on proposers shall be prohibited.**
3. The following conditions must exist in order to use a competitive negotiated procurement method:
 - a) There must be a complete and adequate scope of work which would allow for competition.
 - b) The competitive negotiated procurement process does not require award to the lowest bidder.
 - c) The contract award amount, whether a firm fixed price or cost reimbursement, is determined based on the original vendor proposal, which may be changed using a Best and Final Offer (BAFO) and/or through negotiation between the two parties.
 - (1) Discussions or negotiations may also be used to address technical requirements.
 - d) If time and material contract is to be used, a determination must be made in writing that no other type of contract is suitable. The determination must demonstrate that it is not possible at the time of contract execution to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
 - e) Cost plus a percentage of cost type contract shall be prohibited nor shall a cost plus percentage of construction cost type contract be used in pricing Architectural/Engineering contracts.
4. If the requirement is for an Architectural/Engineering and/or Professional service, the following shall apply:
 - a) Architectural and Engineering services must be competitively solicited and evaluated based solely on technical merit. Cost is not an evaluated factor.
 - b) Board authorization shall be required for release of RFPs on non-budgeted projects greater than \$25,000 but not on specifically budgeted projects.
 - c) Board approval of selection of the top ranked firms shall be required for budgeted procurements greater than \$250,000 and non-budgeted projects greater than \$25,000.

CAMM Procedures

approved in the next Board cycle.

F. Scopes of Work and Specifications Procedures

1. The preparation of specifications and scopes of work should provide a basis for acquiring the goods and services required by the Authority. Requesting departments should be as specific as possible in scopes and specifications.
2. The requesting department shall submit written scope of work and specifications to CA for their review.
3. CA will review and work with end user to address any ambiguities, potential conflicts or violations to CAMM Policies. *Any unreasonable requirements imposed on bidders or proposers are prohibited.*
4. CA is responsible for coordinating other reviews (i.e., risk management, safety, DBE, legal) before incorporating the SOW in the legal procurement documents.

G. Option Term Procedures

1. An option term is a unilateral right in a contract by which OCTA may elect to purchase additional equipment, supplies, or services called for in the contract, or OCTA may elect to exercise the option term of the contract.
2. As part of the procurement planning process, the CA and Project Manager should decide if quantity options and/or term options are going to be incorporated into the solicitation and proposed agreement. In the case of rolling stock that will be purchased using federal funds, the contract period shall not exceed five (5) years inclusive of options.
3. The CA must include in the price forms that allows the bidders to submit pricing for the quantity options or term options.
4. When options may be exercised over a long contract period, the CA can reduce the potential risk to the bidders by including a price escalation provision. Consumer price indexes or other particular industry related indexes may be used. These indexes can be obtained from the Bureau of Labor Statistics of the U.S. Department of Labor.
5. The evaluation committee must include in their evaluation the option quantities or periods contained in the bid or proposal in order to determine the contract award. If options have not been evaluated as part of the award, the exercise of each option term or quantity is considered sole source procurement.
6. Six months prior to the expiration of the contract term, CAMM will send to the Project Manager a memo indicating that the contract term will expire and request that the Project Manager respond stating if he/she wishes to exercise the option term. The returned memo will be included in the contract file.
7. If the Project Manager decides to exercise the option term, he/she will issue a requisition requesting that the contract be amended.
8. The CA will review the option pricing to ensure that the pricing is still

Micro-Purchase Splitting to Avoid Competition

Policy

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CAMM Policy Manual

whether the single purchase limit has been exceeded or the monthly spending limit.

c) The Cardholder shall be responsible for inspecting any shipment of goods ordered.

d) In case of returns, the Cardholder shall coordinate first with the supplier.

(1) If a dispute situation occurs, the Cardholder shall follow the procedures detailed in the CAMM PCC Manual.

7. Purchasing Card Transaction Log

a) It is required that a Purchasing Transaction Log be maintained by the Cardholder.

b) Cardholders must always obtain a detailed receipt for each purchase when using the Purchase Card.

c) All packing slips must be retained by the Cardholder as part of the Purchasing Card documentation.

d) The log and receipts shall be retained as backup to the monthly bank statement and a copy sent to Accounting for the correct recording of charges to the department's budget.

e) It is mandatory to retain all vendor receipts/documentation to simplify reconciliation for purchases made with the Purchasing Card.

f) Cardholders shall ask the vendors to send the invoices and/or receipts directly to the Cardholder and not Accounting.

(1) It is the Cardholder's responsibility to ensure that there is a receipt for each purchase.

8. Reconciliation

a) Payment to the bank shall be made by Accounting. Each cardholder will receive from the bank a monthly statement. This statement along with the transaction log and copies of all receipts must be sent to Accounting by the deadline set each month

(1) The Cardholder shall, to the greatest extent possible, reconcile the monthly bank statement the same day it is received from the bank, to verify its accuracy.

B. Micro-Purchase Policy

1. A Micro-Purchase is an informal method of procuring goods and services with a value of \$2,500 or under. A micro-purchase may require obtaining competitive quotations. If quote is obtained, the CA shall award to lowest responsive and responsible bidder. The following procurement methods may be used for Micro-Purchases:

a) The purchasing credit card may be used.

b) For those vendors who do not accept purchasing credit cards, payment requests shall be submitted to Accounting.

c) Procurements shall not be divided or reduced in size merely to fall within the micro-purchase limit.

CAMM Procedures

2. The CA shall document in the file that a determination was made that the price is fair and reasonable, and the method used to make that determination. This determination is to be conducted if using a purchase order to obtain the goods or services. If Purchasing Credit Card is used, the cardholder will make the determination if the price is fair and reasonable.
3. A micro-purchase may require obtaining competitive quotations. If quote is obtained, award to lowest responsive and responsible bidder.
4. Competitive quotations are not required if the CA determines that the price to be paid is fair and reasonable. The CA will document in the file that a determination was made that the price is fair and reasonable, and the method used to make that determination.
5. Authorized employees may use the Purchasing Credit Card for these purchases in accordance with the Purchasing Credit Card Policy.
6. For those vendors who do not accept purchase orders or purchasing credit cards, payment requests will be submitted to Accounting.
7. Procurements shall not be divided or reduced in size merely to fall within the micro-purchase limit.

C. Blanket Purchase Orders Procedures

1. Blanket POs will be used to cover annual requirements of small, repetitive type procurements of goods and services. Authority to utilize the Blanket Purchase Order may be delegated by the department manager to an individual within the requesting department.
2. Blanket POs of \$50,000 or less can be bid using the informal procurement process.
3. A blanket PO is awarded to a vendor based on the requirements of the procurement including price and deliver schedule
4. CA is required to document all procurement actions and include in the PO file.

D. Request for Quote (RFQ) Procedures

1. For RFQ purchases which are used for purchases of \$50,000 or less, the following procedures should be followed by end user.
 - a) The Project Manager shall:
 - (1) Determine amount based upon the approved line item budget
 - (2) Determine funding source and complete required forms, if necessary
 - (3) Consider time frame and approval hierarchy for the requisition process
 - (4) Enter Purchase Requisition into Ellipse, and include the following information:
 - (a) Account number and project number
 - (b) Budget page number
 - (c) Item description

Prices – Fair and Reasonable

Policy

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CAMM Policy Manual

2. The CA shall document in the file that a determination was made that the price is fair and reasonable, and the method used to make that determination.

C. Informal Purchase Policy

1. Informal purchases for services:
 - a) For those purchases of \$2,501 to \$50,000, the Request for Quote (RFQ) process may be used.
 - (1) An Evaluation Committee consisting of the CA and Project Manager shall use factors such as cost/price analysis and proposal content to determine award.
 - (2) The CA shall document results of all such informal procurement actions, including that the price was fair and reasonable and the method used to make that determination.
2. Informal purchases for goods:
 - a) For those purchases of \$2,501 to \$50,000, the RFQ process may be used.
 - (1) Award is made to the lowest bidder.
 - (2) The CA shall document results of all such informal procurement actions, including that the price was fair and reasonable and the method used to make that determination.

D. Blanket Purchase Orders Policy

1. Blanket Purchase Orders (PO) shall be used to cover annual requirements of small, repetitive type procurements of goods.
2. Permission to use the Blanket PO may be delegated by the department manager to an individual within the requesting department.

E. Sole Source Procurement Policy

1. Sole Source procurements may be used only when:
 - a) The item is available only from a single source.
 - b) The public exigency or emergency for the requirement exists which will not permit a delay resulting from competitive solicitation.
 - (1) Failure to submit requirements in a timely manner to meet project deadlines is not an emergency situation.
 - c) After solicitation of a number of sources, competition is determined inadequate.
 - d) The item is an associated capital maintenance item as defined in 49 USC and 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced.
 - (1) The staff must first certify in writing (i) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is no higher than the price paid for such item by like customers.

Rejection of Bids – Business Reasons

Policy

Element 6, No. 6

CAMM Policy Manual

registered in the County of Orange in the State of California.

7. Bid guarantees, performance bonds and payment bonds shall not be required unless the procurement involves equipment or services of a critical nature to the operations of the Authority and/or is specifically manufactured for the Authority thereby making procurement from another source difficult.

E. Insurance Requirements Policy

CAMM is responsible for ensuring that all insurance requirements for procurements are reviewed and approved by Risk Management, based on the following criteria.

1. All procurements \$100,000 or greater, regardless of procurement type, must be approved by Risk Management.
2. All procurements for the following must be approved by Risk Management:
 - a) Vehicle purchases
 - b) Public works
 - c) Environmental services
 - d) Architectural and Engineering
 - e) Paratransit services

F. Term of Agreements Policy

1. Multi-year contracts shall be utilized when appropriate.
2. Contract terms can exceed a total of five (5) years when:
 - a) Requesting departments document rationale for contracts longer than five (5) years; and
 - b) Board of Directors' prior concurrence is required before a contract can extend beyond five (5) years.
3. For FTA funded rolling stock, five (5) years is the maximum contract term.

G. Bid or Proposal Rejections Policy

1. The Authority reserves the right to reject any and all bids or proposals, or to waive any informality or non-substantive defects in bids or proposals as the business interest of the Authority may require. The Authority shall document in the contract file the business reason for rejecting bids or proposals.
2. Only those bids or proposals shall be considered which are deemed responsive to the Invitation for Bids (IFB) or Request for Proposals (RFP).
3. Bids and proposals submitted after the date and time specified in the solicitation shall be rejected by the Authority as non-responsive and will be returned to the bidder unopened. Any exception to this policy must be approved by the CAMM Management.

H. Cost and Price Analysis Policy

Best Value for Determining Award

Policy

Procedures

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CAMM Policy Manual

- (a) If the Committee member(s) cannot provide an adequate justification for the score(s), then the CAMM Management shall have the authority to eliminate that member(s) score(s) from the overall evaluation process.
- j) Discussions / Negotiations Policy
 - (1) The Evaluation Committee may conduct discussions and/or negotiations with all of the short-listed firms prior to final selection.
 - (2) The CA shall have the authority to negotiate and speak for the Authority's negotiating team.
 - (a) Negotiations shall be a team effort lead by the CA.
 - (b) The CA shall request and receive all data required from the Consultant to enter into negotiations.
 - (c) The CA shall confer with appropriate departments, such as Internal Audit or Legal, when data received requires their special expertise.
 - (3) Negotiations may be concluded prior to final selection of the consultant or conclude after a final selection has been made.
 - (a) Once the CA declares negotiations to be concluded, he or she shall write a memo of negotiations to be signed by both the CA and the Project Manager.
 - (4) Once the final selection of a consultant has been made, the CA shall draft the contract and obtain signatures. The contract shall reflect the formal negotiation results.
- k) Award of Contract

Contract awards will be made to the responsible firm whose proposal is most advantageous to the Authority with price and other factors considered. In determining which proposal is most advantageous, the Authority may award to the proposer whose proposal offers the greatest business value to the Authority based upon an analysis of a tradeoff of technical factors and price to arrive at the proposal that represents the "best value" to the Authority.

 - (1) For procurements greater than \$250,000, the award of the contract shall occur when the Board of Directors approves the selection of Consultant and authorizes the Chief Executive Officer to execute a contract.
 - (2) For procurements \$250,000 or less, the award of the contract shall occur when the evaluation process has been completed and CAMM Management concurs with the Evaluation Committee.

12. Debriefings

The Consultant may request, in writing, a debriefing within three (3) business days of receipt of the on-line notification of contract award.

CAMM Procedures

write a memo of negotiations to be signed by both the CA and the Project Manager

20. Award of Contract

Contract awards will be made to the responsible firm whose proposal is most advantageous to the Authority with price and other factors considered. In determining which proposal is most advantageous, the Authority may award to the proposer whose proposal offers the greatest business value to the Authority based upon an analysis of a tradeoff of technical factors and price to arrive at the proposal that represents the "best value" to the Authority.

- a) For Board approved Consultant selections, the Chief Executive Officer will execute a contract
- b) For non Board Approved Contracts:
 - (1) The CA will prepare all contract documents to include all negotiated items, once CAMM Management concurs with the recommendations
 - (2) The CA will obtain the appropriate Authority signatures and then will send the contract to the successful Candidate
 - (3) Notice of contract award should be posted on CAMMNET within three (3) business days of consultant selection. The notice should contain the awarded firm, the total price and procedures for a debriefing
 - (4) CAMM will distribute electronic copies of the executed contract to:
 - (a) Consultant
 - (b) Accounting
 - (c) Requesting Department
 - (d) CAMM Senior Financial Analyst
 - (e) Other appropriate departments
- c) The original contract should be retained by CA in the official contract file

21. Review Proof of Insurance and Other Documents

- a) Upon receipt of the insurance certificates from the selected Firm, the CA will have the insurance certificates reviewed and validated by the Risk Management Department

22. The CA will coordinate with the Project Manager on the Notice to Proceed date, and will send out the Notice to Proceed

23. CA will conduct a Kick-off Meeting when appropriate

- a) The Consultant, Project Manager, the DBE Officer (if appropriate) will be invited to an orientation meeting, to review the contract terms and conditions and clarify any technical issues
- b) The CA will coordinate the meeting, prepare the agenda, and prepare a report detailing the items discussed
- c) The Project Manager should focus discussions on the technical aspects
- d) The Kick-off meeting should cover the following areas:
 - (1) Terms and conditions

Design - Build Policy

Policy

Element 6, No. 8

CAMM Policy Manual

increase the contract price beyond the funds obligated under the contract.

F. Construction Change Orders Policy

1. The Authority shall comply with the California Public Contract Code, Section 20142. Amendments to construction contracts may be authorized by the Chief Executive Officer as follows:

- a) \$5,000 per change when the total amount of the original contract does not exceed \$50,000, or
- b) Ten (10) percent of the amount of any original contract that exceeds \$50,000 but does not exceed \$250,000, or
- c) For contracts greater than \$250,000, the change shall not exceed \$25,000, plus five (5) percent of the amount of the original contract in excess of \$250,000.

2. Changes in excess of \$150,000 require Board approval.

G. Design-Build Policy

1. Design-Build procurement method consists of contracting for the design and construction simultaneously with a contract award to a single contractor, joint venture, team or partnership that will be responsible for both the design and construction.

2. To determine what procurement method will be used for the design-build procurement, various activities must be separated and classified as design or construction activities, then the total value of each must be estimated. If the construction costs of a design-build project are the predominant costs, then a sealed bid method must be used for the entire procurement. If the design costs for the design-build procurement are the predominant costs, then a qualification based procurement method must be used (see Architectural and Engineering Services policy). For whichever method of procurement is determined, the Authority must follow the state and federal laws for that particular procurement method and document in the contract file how the determination was made.

H. Revenue Contracts Policy

1. A revenue contract is any third party contract whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing locally funded or FTA funded assets.

2. The requirements for competitive negotiated procurements apply to all revenue generating contracts. If the revenue contract uses FTA funds, all FTA requirements as specified in Circular 4220.IF apply.

Cost Principles

Procedures

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CAMM Procedures

The following determination should be made:

- a) Contracts of \$5 Million or Less – The CA may accept the audit recommendations of the contractor's certified public accountant or indirect cost information in the contractor's annual statement to their stockholders, shareholders or owners, or examples of acceptance of their rates by other governmental agencies within the last six months.
- b) Contracts Exceeding \$5 Million – If the contract exceeds \$5 million, the contractor may provide an audit from the Defense Contract Audit Agency or an accounting firm approved by the federal government to perform audits for the federal government to verify the contractor's rates.

4. Cost Analysis Procedure when performed by the Contract Administrator:

- a) To ensure that offerors are submitting the same type of cost information, the CA should include a specific cost and price form to be completed and submitted by the offeror.
- b) The CA should begin the cost analysis by first reviewing the independent cost estimate that was provided by the project manager at the time the requisition was submitted. This will provide a basis for determining if the cost elements provided are realistic for the work to be performed.
- c) The CA should work with the project manager to review the technical components of the cost. This analysis will look at proposed types and quantities of labor, materials, special tooling or equipment, travel and other direct costs. This analysis will determine if the cost elements provided are sufficient to perform the scope of work, reflect a clear understanding of the requirements and are consistent with the performance described in the technical proposal. The analysis will include as a minimum, a detailed breakdown of each cost element (labor rates, overhead rates, profit and any proposed escalation rates) and supporting documentation, including payroll registers and labor hour allocations.
- d) As part of this analysis, profit must be reviewed and negotiated as a separate element of the cost. Consideration should be given to the following when analyzing profit:
 - (1) Complexity of the work to be performed
 - (2) Risk taken by the contractor
 - (3) Contractor's investment
 - (4) Amount of subcontracting
 - (5) Record of past performance
 - (6) Industry profit rates for similar work in surrounding geographical areas

5. Cost Analysis Procedures when performed by the Internal Auditor:

- a) The CA should include in the procurement plan an adequate amount of time for a cost analysis by the Internal Audit department.
- b) Once a short list of firms has been selected, the CA should inform the Internal Audit department of the likely timeframe for requesting the audit. For Architectural and Engineering contracts, once the Board has made the

Cost Plus Percentage of Cost

Policy

Procedures

Element 6, No. 10

B. Competitive Negotiated Procurements – Request for Proposal (RFP) Policy

1. The RFP process is a competitive proposal method used when proposals can be solicited from an adequate number of qualified vendors. Proposals are evaluated on a number of factors including price, which are identified in the solicitation along with their relative importance. Award is made to the responsible firm whose proposal is most advantageous to OCTA with price and other factors considered. The Director of CAMM has the authority to cancel a solicitation. A cancellation notice will be provided.
2. The requesting department must always initiate a requisition for services, scope of work, and an independent cost estimate prior to the start of the RFP process. Imposing unreasonable requirements on proposers shall be prohibited.
3. The following conditions must exist in order to use a competitive negotiated procurement method:
 - a) There must be a complete and adequate scope of work which would allow for competition.
 - b) The competitive negotiated procurement process does not require award to the lowest bidder.
 - c) The contract award amount, whether a firm fixed price or cost reimbursement, is determined based on the original vendor proposal, which may be changed using a Best and Final Offer (BAFO) and/or through negotiation between the two parties.
 - (1) Discussions or negotiations may also be used to address technical requirements.
 - d) If time and material contract is to be used, a determination must be made in writing that no other type of contract is suitable. The determination must demonstrate that it is not possible at the time of contract execution to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
 - e) Cost plus a percentage of cost type contract shall be prohibited nor shall a cost plus percentage of construction cost type contract be used in pricing Architectural/Engineering contracts.
4. If the requirement is for an Architectural/Engineering and/or Professional service, the following shall apply:
 - a) Architectural and Engineering services must be competitively solicited and evaluated based solely on technical merit. Cost is not an evaluated factor.
 - b) Board authorization shall be required for release of RFPs on non-budgeted projects greater than \$25,000 but not on specifically budgeted projects.
 - c) Board approval of selection of the top ranked firms shall be required for budgeted procurements greater than \$250,000 and non-budgeted projects greater than \$25,000.

CAMM Procedures

- (4) Consultants are not permitted to assist in the writing of the scope of work on projects for which they will bid
 - (5) Notify CA of any approved equals and any vendor contacts
 - (6) Ensure the description on the request is consistent with budget including the line item
 - b) Enter requisition in Ellipse
 - c) Prepare ICE and submit to CAMM with requisition
4. CAMM Senior Financial Analyst will review the following:
- a) Accounting codes and budget page reference
 - b) Eligibility and availability of funds
 - c) Grant levels and requirements
 - d) Return requisition to requesting department if changes are necessary
5. CAMM will always call the requesting department before proceeding with the procurement process at this point. The CA shall contact the requester within two (2) business days after receipt of requisition to notify they have been assigned the requisition and to begin the Procurement Plan.
6. Board approval is required to release an RFP if:
- a) Requisition is in excess of \$1,000,000, for this initial term or
 - b) Unbudgeted and over \$25,000
 - (1) If Board approval is required, the requesting department will prepare a Staff Report which should include:
 - (a) Reason for the request of the Board of Directors' approval
 - (b) Problem or issue to be solved
 - (c) Why the project is necessary
 - (d) End product of the project
 - (e) Description of the services or goods to be performed or equipment to be procured
 - (f) Identify budget information
 - (2) The CA will prepare the Procurement Approach section of the Staff Report and draft RFP to be reviewed by CAMM Management and included in the Staff Report. If time and material contract is to be used, a determination must be made in writing that no other type of contract is suitable. The determination must demonstrate that it is not possible at the time of contract execution to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
7. The Staff Report will be reviewed and approved by managers and executive division directors
8. CAMM's Responsibilities for Preparation of RFP
- a) CAMM's primary responsibilities for preparation of the RFP shall be:
 - (1) Determination of the contract type. A cost plus percentage of cost and a cost plus percentage of construction cost are prohibited types of contracts.

Advanced Payments

Policy

Procedures

Element 6, No. 11

CAMM Policy Manual

responsible bidder.

D. Architectural and Engineering Services Policy

1. Architectural and Engineering (A&E) applies to procurements of professional consultants for engineering, architectural, land surveying or other support services.
2. A&E services must be competitively solicited and evaluated based solely on technical merit, pursuant to the state and/or federal Brooks Act.
3. A&E services are procured through the Request for Proposal (RFP) procedure.
4. Only the highest rank firms' cost proposal will be reviewed for fair and reasonableness and included in the final negotiated and approved contract.

E. Payment Policy

1. Contract funds should not be expended prior to completion of contract.
 - a) Payment for additional work is not allowed by check or payment request.
 - b) A contract amendment must be created prior to all additional work that requires any type of fee or payment.
2. Any payment over \$2,500 will require a Payment Request Form as a cover sheet for payments that do not require or have a formal contract, purchase order, cooperative agreement or travel expense report.
3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.
4. Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or

CAMM Procedures

sheet only for payments that do not require or have a formal Contract, Purchase Order, Coop Agreement or Travel Expense Report.

3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.

Progress Payment

Policy

Procedures

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responsible bidder.

D. Architectural and Engineering Services Policy

1. Architectural and Engineering (A&E) applies to procurements of professional consultants for engineering, architectural, land surveying or other support services.
2. A&E services must be competitively solicited and evaluated based solely on technical merit, pursuant to the state and/or federal Brooks Act.
3. A&E services are procured through the Request for Proposal (RFP) procedure.
4. Only the highest rank firms' cost proposal will be reviewed for fair and reasonableness and included in the final negotiated and approved contract.

E. Payment Policy

1. Contract funds should not be expended prior to completion of contract.
 - a) Payment for additional work is not allowed by check or payment request.
 - b) A contract amendment must be created prior to all additional work that requires any type of fee or payment.
2. Any payment over \$2,500 will require a Payment Request Form as a cover sheet for payments that do not require or have a formal contract, purchase order, cooperative agreement or travel expense report.
3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.
4. **Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.**

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or

CAMM Policy Manual

increase the contract price beyond the funds obligated under the contract.

F. Construction Change Orders Policy

1. The Authority shall comply with the California Public Contract Code, Section 20142. Amendments to construction contracts may be authorized by the Chief Executive Officer as follows:

- a) \$5,000 per change when the total amount of the original contract does not exceed \$50,000, or
- b) Ten (10) percent of the amount of any original contract that exceeds \$50,000 but does not exceed \$250,000, or
- c) For contracts greater than \$250,000, the change shall not exceed \$25,000, plus five (5) percent of the amount of the original contract in excess of \$250,000.

2. Changes in excess of \$150,000 require Board approval.

G. Design-Build Policy

1. Design-Build procurement method consists of contracting for the design and construction simultaneously with a contract award to a single contractor, joint venture, team or partnership that will be responsible for both the design and construction.

2. To determine what procurement method will be used for the design-build procurement, various activities must be separated and classified as design or construction activities, then the total value of each must be estimated. If the construction costs of a design-build project are the predominant costs, then a sealed bid method must be used for the entire procurement. If the design costs for the design-build procurement are the predominant costs, then a qualification based procurement method must be used (see Architectural and Engineering Services policy). For whichever method of procurement is determined, the Authority must follow the state and federal laws for that particular procurement method and document in the contract file how the determination was made.

H. Revenue Contracts Policy

1. A revenue contract is any third party contract whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing locally funded or FTA funded assets.

2. The requirements for competitive negotiated procurements apply to all revenue generating contracts. If the revenue contract uses FTA funds, all FTA requirements as specified in Circular 4220.IF apply.

CAMM Procedures

sheet only for payments that do not require or have a formal Contract, Purchase Order, Coop Agreement or Travel Expense Report.

3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.

4. Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or increase the contract price beyond the funds obligated under the contract.

Liquidated Damages

Policy

Procedures

Element 6, No. 13

CAMM Policy Manual

registered in the County of Orange in the State of California.

7. Bid guarantees, performance bonds and payment bonds shall not be required unless the procurement involves equipment or services of a critical nature to the operations of the Authority and/or is specifically manufactured for the Authority thereby making procurement from another source difficult.

8. The Authority may use liquidated damages if it can reasonably expect to suffer damages from late completion or delivery, and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time. A memo detailing how the liquidating damages were determined must be included in the contract file. The rate must be specified in the contractor's agreement.

E. Insurance Requirements Policy

CAMM is responsible for ensuring that all insurance requirements for procurements are reviewed and approved by Risk Management, based on the following criteria.

1. All procurements \$100,000 or greater, regardless of procurement type, must be approved by Risk Management.
2. All procurements for the following must be approved by Risk Management:
 - a) Vehicle purchases
 - b) Public works
 - c) Environmental services
 - d) Architectural and Engineering
 - e) Paratransit services

F. Term of Agreements Policy

1. Multi-year contracts shall be utilized when appropriate.
2. Contract terms can exceed a total of five (5) years when:
 - a) Requesting departments document rationale for contracts longer than five (5) years; and
 - b) Board of Directors' prior concurrence is required before a contract can extend beyond five (5) years.
3. For FTA funded rolling stock, five (5) years is the maximum contract term.

CAMM Procedures

- (1) The CA shall refer to the CAMM Bonding Requirements Policy to determine Bonding requirements
 - e) The Authority may use liquidated damages if it can reasonably expect to suffer damages from late completion or delivery, and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time. A memo detailing how the liquidating damages were determined must be included in the contract file. The rate must be specified in the contractor's agreement.
7. Board approval is required to release IFB if:
 - a) Requisition is in excess of \$1,000,000, or
 - b) Unbudgeted and over \$25,000
 - c) If Board approval is required, the requesting department will prepare a Staff Report which should include:
 - (1) Reason for the request of the Board of Directors' approval
 - (2) Problem or issue to be solved
 - (3) Project objectives
 - (4) End product of the project
 - (5) Description of the services or goods to be performed or equipment to be procured
 - (6) Identify budget information
 - (7) Fiscal impact
 - d) The CA will prepare the Procurement Approach section and draft IFB to be reviewed by CAMM Management and included in the Staff Report
 8. The Staff Report will be reviewed and approved by managers and executive division directors
 9. CAMM shall post the IFB on CAMMNET
 - a) CA shall obtain bid list from CAMMNET to be included in the contract file
 - b) Although the preferred method is to post all solicitations on CAMMNET, a CA may issue a solicitation without posting it on CAMMNET, with prior approval by CAMM Management
 - c) Hard copies of the IFB package should be made available to those firms requesting in writing a copy of the IFB
 10. The CA must prepare and submit a public notice in a newspaper of general circulation for two (2) consecutive weeks prior to the date set for bid closing
 - a) A CAMM Manager, or authorized representative, will review the IFB package prior to its release to the public
 - b) The CA is responsible for submitting the approved draft IFB for inclusion in Board Report. The published notice shall include:
 - (1) General description of the service or goods to be purchased
 - (2) Directions on how to obtain the IFB
 - (3) Bid submittal location
 - (4) Location, last day and hour that bids will be accepted

**Federally Required Clauses
Small Purchase Limit and Beyond**

Element 6, Nos. 14 and 15

FEDERALLY REQUIRED CLAUSES

(Excluding micro-purchases, except for construction contracts over \$2000)

TYPE OF PROCUREMENT					
CLAUSE	Professional Services/A&E	Contracted Transportation	Rolling Stock Purchase	Construction	Fixed Assets & Equipment
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 for Convenience and for Cause and Remedies to Cure	All	All	All	All	All
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
Suspension and Debarment (clause required)	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America (clause and form required)			>\$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			If involves property transported by ocean vessel	If involves property transported by ocean vessel	If involves property transported by ocean vessel
Fly America	If involves foreign transport or travel by air	If involves foreign transport or travel by air	If involves foreign transport or travel by air	If involves foreign transport or travel by air	If involves foreign transport or travel by air
Davis-Bacon Act				>\$2,000 (including ferry vessels)	

CLAUSE	Professional Services/A&E	Contracted Transportation	Rolling Stock Purchase	Construction	Fixed Assets & Equipment
Contract Work Hours and Safety Standards		>\$2,500 (except transportation services)	>\$2,500	>\$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings and Additions			New Buildings and Additions	
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	If involves research & development				
Rights in Data and Copyright Requirements	If involves 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

Contract Administrator Signature

Section / Department Manager Signature

Revenue Contract Policy

Policy

Element 6, No. 16

CAMM Policy Manual

increase the contract price beyond the funds obligated under the contract.

F. Construction Change Orders Policy

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2. The requirements for competitive negotiated procurements apply to all revenue generating contracts. If the revenue contract uses FTA funds, all FTA requirements as specified in Circular 4220.IF apply.

Independent Cost Estimate

Element 7



INDEPENDENT COST ESTIMATE (ICE)

Instructions: Complete and submit all three pages to Contracts Administration & Materials Management (CMM), along with your requisition and scope of work. CMM will not start the procurement until all three documents have been received.

Part I. General Information

Project Name and Title	(SHADED AREA FOR PROCUREMENT USE ONLY)
Project Description	Assigned Buyer No.
Purchase Requisition No.	D/M/WBE%

<input type="checkbox"/>	New Contract/Procurement		
<input type="checkbox"/>	Contract Amendment	Contract/PO No.:	
<input type="checkbox"/>	Contract Task Order	Contract/PO No.:	
<input type="checkbox"/>	Option Term	Contract/PO No.:	

Date: _____

Requestor: _____
(Name and title)

Signature: _____

Phone Ext.: _____

Cost Estimate: \$ _____ (Include shipping, handling and taxes, if applicable)

Part II. Estimate Guide: Please substantiate the estimate using the following information.

Estimate Type	Items to include	Where to find supporting information
Services (Other than A&E)	<ol style="list-style-type: none"> 1. Tasks you want done 2. Types of people needed (i.e., supervisor, administrative assistant, other) 3. Positions required (i.e., Project Manager, Deputy PM, Senior Engineer/Planner, other) 4. Estimated hours by position 5. Salary/billing rates applied 6. Prevailing wage rate category applied 7. Profit/applied fee 8. Direct expenses 9. Completion schedule 	<ol style="list-style-type: none"> 1. Current or past contracts for similar services 2. Other properties/departments doing similar work 3. Historical price and cost data

continued



INDEPENDENT COST ESTIMATE (ICE)

Estimate Type	Items to include	Where to find supporting information
Architect, Engineers, Designers	<ol style="list-style-type: none"> 1. Tasks you want done 2. Types of people needed (i.e., engineers, administrative assistant, other) 3. Positions (Project Manager, Deputy PM, Senior Engineer/Planner, other) 4. Estimated hours by position 5. Salary/billing rates applied 6. Profit/applied fee 7. Overhead rate (%) 8. Direct expenses 9. Completion schedule 	<ol style="list-style-type: none"> 1. Current or past contracts for similar services 2. Other properties/departments doing similar work 3. Historical price and cost data
Goods/Equipment	<ol style="list-style-type: none"> 1. Product needed 2. Quantity 3. Unit price 4. Markups, overhead, profit 5. Delivery schedule desired 6. Warranty 	<ol style="list-style-type: none"> 1. Vendor survey/Market survey 2. Current or past contracts for the same or similar product 3. Historical price and cost data 4. Various published indices
Construction	<ol style="list-style-type: none"> 1. Product needed 2. Labor (at a minimum use Davis Bacon) 3. Materials 4. Bonds 5. Insurance 6. Mobilization 7. Equipment 8. Markups, fringes, overheads, profit 9. Completion schedule 	<ol style="list-style-type: none"> 1. "Means Book" 2. "Blue Book" 3. Davis Bacon Wage Rates/Prevailing Wages 4. Current or past contracts for the same project 5. Historical price and cost data



INDEPENDENT COST ESTIMATE (ICE)

Part III. Independent Cost Estimate – Using the information provided in Part II, prepare the ICE for your procurement. Use any or all of the categories listed below.

Prepared by: _____
 Signature: _____

DESCRIPTION OF COST ELEMENTS				
1. DIRECT LABOR (List of Labor categories)	Estimated Hours	Rate per Hour (\$)	Estimated Cost (\$)	Total Estimated Cost (\$)
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
		\$	\$	
TOTAL DIRECT LABOR				\$
2. OVERHEAD	(Rate (%))	Total Labor (\$)	Estimated Cost (\$)	Total Estimated Cost (\$)
	%	\$	\$	\$
3. MATERIALS/SERVICES (Excluding Information Technology [IT])			Estimated Cost (\$)	Total Estimated Cost (\$)
			\$	\$
4. INFORMATION TECHNOLOGY SUPPORT			Estimated Cost (\$)	Total Estimated Cost (\$)
			\$	
			\$	
TOTAL IT SUPPORT				\$
5. TRAVEL			Estimated Cost (\$)	Total Estimated Cost (\$)
			\$	\$
6. SUBCONTRACTOR(S)/CONSULTANT(S)			Estimated Cost (\$)	Total Estimated Cost (\$)
TOTAL SUBCONTRACTOR(S)/CONSULTANT(S)				\$
7. OTHER DIRECT COSTS			Estimated Cost (\$)	Total Estimated Cost (\$)
			\$	\$
8. TOTAL ESTIMATED COST				\$

Responsible Contractor

Procedures

Element 18

CAMM Procedures

- Procurement Policy in the CAMM Policy Manual.) The Project Manager shall:
- a) Provide justification for pursuing procurements on a sole source basis
 - b) Consider additional approvals and timeframe required by this process
 - c) Complete Requisition Process and Sole Source Justification including:
 - (1) Requestor will enter requisition in Ellipse
 - (2) A Sole Source Checklist Form must be completed and signed by the requesting department and submitted to Director of CAMM for review and approval.
 - (3) Prepare and provide an ICE and specifications and other form if necessary
2. Once the sole source has been approved and assigned, the CA shall:
- a) Send the SOW to the vendor and request a technical proposal and price
 - b) Receive proposal and review with PM. *The CA shall make a written determination that the contractor is a responsible firm.*
 - c) Perform a cost analysis, including the specific elements of cost and profit if less than \$50,000.
 - d) If greater than \$50,000, the CA shall prepare package for Internal Audit review pursuant to cost and price analysis procedure.
 - e) If not approved, the requestor should prepare the scope of work for competitive solicitation.
 - f) If the item is an associated capital maintenance item as defined in 49 USC &5307(a)(1) the CA must first certify in writing:
 - (1) That such manufacturer or supplier is the only source for such item; and
 - (2) That the price of such item is no higher than the price paid for such item by like customers
 - g) CA will negotiate with the vendor (if necessary)
 - (1) CAMM and requesting department will review CAMM or Internal Auditor comments (if applicable)
 - (2) CAMM and requesting department will prepare negotiating strategy and conduct negotiations (as necessary) and document the contract file accordingly
3. If Board Approval is required, a Staff Report will be prepared
- a) PM should document relevant information, identify budget, include Internal Audit report if required with approval signatures
 - b) CA shall prepare Procurement Approach section of the Staff Report which shall include an evaluation of the reasonableness of cost elements or total price
 - c) Upon CAMM Management approval, the CA will send the PM the Procurement Approach to be included in Staff Report
4. CA will finalize purchase order/contract as needed

AGREEMENT BREAKDOWN SHEET

LEFT HAND SIDE-INSIDE COVER

- Vendor Profile (Camm Net)/Ellipse Print Out

NOTICE TO PROCEED 1

- Notice of Completion

PRELIMINARY NOTICES 2

- Preliminary/Stop Notices Log
- Preliminary/Stop Notices (Construction)

AGREEMENT AND/OR P.O. EXHIBIT 3

- Agreement including all Attachments
- Amendments or Change Orders / Back-Up Documentation (ICE)

CTO's 4

- CTO ACCESS Database Print Out
- CTO Document & Back-Up Documentation (ICE)

STAFF REPORT 5

- Final copy from Board Book & BOD Agenda Setting Package
- Copy of approved BOD minutes showing BOD action on procurement

PARTY DISCLOSURE FORMS 6

- Prime and Subcontractor Listing Form
- Campaign Contribution Information
- Campaign Contribution Correspondence To and From

REQUISITION 7

- Agreement ICE
- ISPI Form
- Grant Approval

CORRESPONDENCE 8

INSURANCE/CERTIFICATES 9

- Insurance Certificates/ Endorsements
- Memos to/from Risk Management
- Insurance Verification Form

BONDS/IRREVOCABLE LETTERS OF CREDIT 10

- Performance/Payment Bonds, Guarantees (Originals)
- Letter of Credit/Escrow Agreements (If applicable)

LEGAL AD AND NOTICE 11

- Verification Publication

ORIGINAL IFB/RFP & ADDENDUMS 12

SOLE SOURCE FORM 13

BID LIST 14

- All Bid Lists (Including Addenda)
- Pre-Bid/Pre-Proposal Registration
- Public Bid Opening Sign-in Sheet

BAFO/AUDIT INFO. 15

- Record Negotiations & Negotiation Memorandum
- Audit Reports

PROPOSALS/NO BIDS 16

- RFP/IFB Record Log
- Original Winning Proposal
- Bid Opening Sign-in Sheet

VENDOR PERFORMANCE FORM 17

EVALUATION FORMS 18

- Procurement Plan/Schedule
- Evaluation Committee Package-including Score Sheets
- Source Selection Plan
- Cost & Price Information
- Dun & Bradstreet Reports
- Reference Checks
- License Checks (Construction/A&E)
- Certifications

EVALUATION NOTES 19

DBE EVALUATION INFO 20

- Evaluation Memos/Letters
- DBE Related Correspondence

NOTES/MISCELLANEOUS 21

- Draft Documents (RFB/IFB)
- Pre-Proposal Notes/Agenda
- Kick-off Meeting Notes
- Debriefing Notes

FUNDING SOURCE:

Local

Federal

Measure M1 M2

Vendor #: _____
Folder: _____
Ellipse Entry Date: _____
Original: _____
A-1 _____ A-2 _____
A-3 _____ A-4 _____
A-5 _____ A-6 _____
Insurance: _____
Unique Terms: _____
PA Sign-off: _____
Section Manager Sign Off: _____

CTO Contract: _____
Other Contracts Awarded Under RFP: _____

CTO Award: _____
Rotational or Competed
If Rotational, Please List In What Order: _____

Adequate Competition

Policy

Procedures

Element 25

CAMM Policy Manual

10. Sealed bids shall remain unopened and stored in a secure location until the public opening.
 - a) The CA shall open the bids publicly at the time and place specified in the IFB package. The CA shall record the following information for each bid:
 - (1) Time and date the bid was submitted
 - (2) Time and date the bid was opened
 - (3) Signature of the person opening the bid
 - (4) Signature of the person witnessing the opening
 - b) The public may review bids at the time of opening, and during the evaluation period up to the award of the bid.
11. Each bid shall be recorded, reviewed and evaluated by the CA and the Project Manager.
 - a) Payment discounts may not be used to determine low bid.
 - b) Upon conclusion of evaluation, the contract award shall be made by written notice to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is lowest in price.
 - c) The CA shall prepare a report summarizing the bids and the report shall be made available to the requesting department.
 - d) The award shall be made by the Board of Directors, Chief Executive Officer, or the CAMM Management depending on value of the order and other factors.
 - e) All bids shall be open to public review after an award has been made.
 - f) If a single bid is received, an analysis must be made to determine if there were any elements in the procurement documents that may have restricted competition. The analysis must be documented and placed in the contract file.
12. CAMM will request an analysis to be conducted by the Internal Audit Department, for any construction, equipment or service procurements over \$50,000 if only a single bid is received.
13. If Board approval is required for the award of the contract, the requesting department and the CA shall prepare a staff report authorizing the Chief Executive Officer to execute the final purchase order or contract, and the report shall include:
 - a) Objectives of the project
 - b) Identification of all bidders responding to the IFB
 - c) Description of the procurement and evaluation process
14. In the event a tie situation exists for an IFB, award may be made to one of the bidders by drawing lots or all bids may be rejected.

CAMM Policy Manual

regarding any of the candidate's contracts have been terminated due to a dispute or legal proceeding, will be taken into consideration.

8. Pre-Proposal Conference
 - a) It may be necessary to hold a Pre-Proposal Conference, prior to proposal submission, to provide firms with a clarification of the RFP requirements.
 - (1) The CA, prior to the release of the RFP, shall, along with the Project Manager, make the determination as to whether or not a Pre-Proposal Conference will be required. This decision will be based on the complexity of the project, and need to inform prospective offerors of the requirements.
 - (2) Information regarding the Pre-Proposal Conference shall be clearly identified in the RFP, and if applicable, the public notice.
9. Addenda
 - a) The CA shall prepare and issue all Addenda to the solicitation, when necessary to make changes to the RFP or respond to questions submitted by firms.
 - b) All changes to the RFP shall be addressed by a written addendum to the RFP and signed by the CA.
10. Proposal Receipt and Disposition
 - a) CAMM shall be responsible to assure all proposals are received in accordance with the terms identified in the RFP.
 - b) Consultants may withdraw a proposal by written notice to the CA.
 - (1) A request for withdrawal must be in writing and received by the CA prior to the proposal due date.
 - c) Proposals shall be considered late if received after the date and time established in the RFP.
 - (1) When a proposal is late, CAMM staff shall return the unopened proposal promptly to the Consultant.
 - d) *If a single proposal is received, an analysis must be made to determine if there were any elements in the procurement documents that may have restricted competition. The analysis must be documented and placed in the contract file.*
11. Evaluation Committee
 - a) Prior to the date the proposals are to be submitted, the CA with input from the Project Manager shall select the proposal evaluation committee. The committee should represent diverse backgrounds who are subject matter experts in their particular field.
 - (1) An outside representative may be included on the evaluation committee if the project is one that has outside stakeholders or if the Project Manager and the CA decide it is in the best interest of the procurement.
 - (2) Negotiated procurements with a total dollar value greater

CAMM Procedures

- f) Certifications, DBE participation - Submit to DBE Officer for Evaluation if applicable
 - g) Three references and required signatures
 - h) Licensing Requirements
 - i) Payment discounts may not be used to determine low bid
 - j) The CA shall prepare a report summarizing the bids
 - (1) The report should be reviewed by a CAMM manager and will be made available to the requesting department
 - k) The Authority reserves the right to reject any or all bids when there are sound business reasons in the best interest of the Authority to do so
17. If a Single Bid is received and is less than \$50,000, CAMM Management will conduct a review to determine if there was adequate competition. If over \$50,000, CA shall prepare memo requesting Internal Audit review to determine if there was adequate competition. If a single bid is received, the CA must determine if any element of the procurement was restricted and caused firms not to submit a bid. The CA must contact at a minimum five firms to inquire why they did not submit bids. Their response must be documented in the contract file. If the results of the discussion are that the scope of work was restrictive so that only one firm could have responded, then there is a lack of competition. The procurement must be cancelled and re-procured or treated as a sole source if it meets the sole source determination.
18. In the event a tie situation exists for an IFB, an award may be made to one of the bidders by drawing lots, or all bids may be rejected
19. The award will be made by the Board of Directors, Chief Executive Officer, or CAMM Management, depending on dollar value of the procurement and other factors. (See Invitation for Bid in the CAMM Policy Manual.)
- a) If Board approval is required, the requesting department and CA shall prepare the Staff Report:
 - (1) Provide overview of project
 - (2) Objectives of the project
 - (3) Description of the procurement approach
 - (4) Identification of three (3) lowest responsive, responsible candidates responding to the IFB
 - (5) Identify budget information
 - b) Obtain review and approval by managers and executive division directors as appropriate
 - c) The Board of Directors will approve contractor selection
20. Upon award, the CA shall post the award on CAMMNET. If federally funded over \$500,000 the posting shall include the percentage of federal dollars.
21. The CA shall prepare final contract to include terms and conditions, specifications or Scope of Work, plans, and other related attachments.
- a) Simultaneously, the CA will begin the process for obtaining necessary bonding and insurance documents
 - (1) Notify contractor to provide insurance and other documents

CAMM Procedures

(3) Hard copies of the Addendum should be made available for those firms who request it in writing

14. Proposal Receipt and Distribution

- a) The CA should refer to Requests for Proposals in the CAMM Policy Manual to ensure proper policy is followed for accepting proposals
- b) The CA will ensure each proposal is stamped with the date and time received and placed in a secure area
- c) The CA will keep a listing of all proposals received and include them in the contract file
- d) The CA will review all proposals received to determine responsiveness. The CA will elevate any issues to CAMM Management
- e) The CA will retain the original proposal for the contract file and distribute copies of proposals to the Evaluation Committee within two (2) business days of receipt
- f) When a proposal is late, CAMM staff shall return the unopened proposal promptly to the firm
- g) If a single proposal is received, the CA must determine if any element of the procurement was restricted and caused firms not to submit a proposal. The CA must contact at a minimum five firms to inquire why they did not submit proposals. Their response must be documented in the contract file. If the results of the discussion are that the scope of work was restrictive so that only one firm could have responded, then there is a lack of competition. The procurement must be cancelled and re-procured or treated as a sole source if it meets the sole source determination.

15. The CA shall coordinate and conduct a pre-evaluation meeting with the evaluation committee members prior to distribution of proposals

- a) Explain the declaration of impartiality and confidentiality form
- b) Explain evaluation process
- c) Review score sheets

16. Verify and Evaluate Technical Offers

CA will check references on all offers received. DBE Officer will evaluate compliance to DBE goal.

17. Evaluation Process

- a) Prior to receiving the proposals, the Evaluation Committee members shall be required to complete a Declaration of Impartiality and Confidentiality Form to safe guard against unauthorized disclosure of information as well as identify any potential conflict of interest. Any Disclosure of Conflicts of Interest shall be forwarded to CAMM Management for review and disposition.
- b) The Committee shall read and score each proposal as well as provide narrative statements to explain the rationale for the scoring
- c) The Committee shall come together as a whole to reveal their scores and discuss the rationale for their decision
- d) A short list of firms, whose technical scores fall into a competitive

Sole Source Cost Analysis

Policy

Procedures

Element 39

CAMM Policy Manual

2. Sole Source procurements shall be avoided whenever possible.
3. A contract amendment or change order that is not within the scope of the original contract shall be considered a Sole Source procurement and must comply with the same requirements identified in this section.
4. Requests for Sole Source procurement must first be approved by the Director of CAMM.
 - a) A cost analysis, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of cost and profit, shall be required.
 - b) An analysis of the level of effort that will be extended by the sole source firm
 - c) For PO or contracts above \$50,000 Internal Audit will be required to perform a price review to determine fair and reasonableness.
 - d) If the procurement is \$50,000 or less, a price review will be performed by CAMM.
5. Sole Source procurements up to \$25,000 shall be approved by the Chief Executive Officer or CAMM Management.
6. Sole Source contracts or purchase orders over \$25,000 shall be approved by the Board of Directors.

F. Unsolicited Proposal Policy

1. OCTA may obtain unsolicited proposals as written submissions, for the purpose of obtaining innovative and unique methods and procedures.
2. Vendors shall provide the following for unsolicited proposals:
 - a) Name, address, and telephone number of the applicant firm or organization and name of the contact person
 - b) Type of organization
 - c) Identification of proprietary data (if any) to be used solely for the purpose of evaluation
 - d) Identification of other parties/agencies to whom the proposal was also submitted
 - e) Identification of any funding commitments from other sources
 - f) Vendors shall provide Cost Proposals which will include the following:
 - (1) An itemized price and support for each line item or cost category using a narrative format.
 - (2) Proposal expenses including Research and Development and prototype and equipment shall not be allowable expenses.
 - g) Vendors shall supply technical proposals which will include the following:
 - (1) A clear and concise overview of the proposed effort
 - (2) Introduction with background information about the applicant organization's relevant capabilities, experience and successes

CAMM Procedures

- Procurement Policy in the CAMM Policy Manual.) The Project Manager shall:
- a) Provide justification for pursuing procurements on a sole source basis
 - b) Consider additional approvals and timeframe required by this process
 - c) Complete Requisition Process and Sole Source Justification including:
 - (1) Requestor will enter requisition in Ellipse
 - (2) A Sole Source Checklist Form must be completed and signed by the requesting department and submitted to Director of CAMM for review and approval.
 - (3) Prepare and provide an ICE and specifications and other form if necessary
2. Once the sole source has been approved and assigned, the CA shall:
- a) Send the SOW to the vendor and request a technical proposal and price
 - b) Receive proposal and review with PM
 - c) Perform a cost analysis, including the specific elements of cost and profit if less than \$50,000.
 - d) If greater than \$50,000, the CA shall prepare package for Internal Audit review pursuant to cost and price analysis procedure.
 - e) If not approved, the requestor should prepare the scope of work for competitive solicitation.
 - f) If the item is an associated capital maintenance item as defined in 49 USC &5307(a)(1) the CA must first certify in writing:
 - (1) That such manufacturer or supplier is the only source for such item; and
 - (2) That the price of such item is no higher than the price paid for such item by like customers
 - g) CA will negotiate with the vendor (if necessary)
 - (1) CAMM and requesting department will review CAMM or Internal Auditor comments (if applicable)
 - (2) CAMM and requesting department will prepare negotiating strategy and conduct negotiations (as necessary) and document the contract file accordingly
3. If Board Approval is required, a Staff Report will be prepared
- a) PM should document relevant information, identify budget, include Internal Audit report if required with approval signatures
 - b) CA shall prepare Procurement Approach section of the Staff Report which shall include an evaluation of the reasonableness of cost elements or total price
 - c) Upon CAMM Management approval, the CA will send the PM the Procurement Approach to be included in Staff Report
4. CA will finalize purchase order/contract as needed

Sole Source Checklist

Checklist	Yes	No
1. Have you obtained a signed sole source form approved by Director of CAMM and Executive Director?		
1. Do you have an approved requisition and signed ICE?		
2. Do you have a proposal from the firm?		
3. Is the procurement over \$25,000? (Board approval is required)		
a. Did you submit your approved Procurement Approach to the project manager?		
4. Is procurement under \$50,000?		
a. Did you perform a cost price analysis?		
b. Has a determination been made that the price is fair and reasonable?		
5. Is procurement over \$50,000?		
a. Has the request for a cost analysis and required documentation been sent to Internal Audit?		
b. Has a determination been made that the price is fair and reasonable?		
c. Has Internal Audit issued an audit report?		
6. Has the determination that the price is fair and reasonable been documented in a written memo?		
7. Has the CAMM section or department manager reviewed cost analysis and signed off on the memo?		

**Cost or Price Analysis
Intergovernmental Agreement
Single Bids / Proposals**

Procedures

Element 41

CAMM Procedures

10. Protest Remedies

- a) In determining the appropriate remedy, Authority should consider all the circumstances surrounding solicitation or contract selection and/or award.
- b) If the Authority determines that the award or proposed award was not made in accordance with the applicable Authority statutes, regulations, procedures, and procedures, Authority shall have the authority, in its sole discretion grant any of the following or any other remedy it deems appropriate, including:
 - (1) If pre-award, issue a new solicitation, make a new consultant selection or award a contract consistent with applicable statutes, regulations, procedures, and procedures
 - (2) If post-award, refrain from extending the term of the contract or awarding task orders under an existing task order agreement
 - (3) Take no further action
 - (4) Take any other action that is permitted by law to promote compliance

R. Cost and Price Analysis Procedures

1. The CA must perform a cost or price analysis in connection with every procurement action, including but not limited to contract amendments, *interagency agreements and single bids/proposals*. This analysis is used to determine if the purchase prices of services or goods are fair and reasonable. The method and degree of analysis is dependent on facts surrounding the particular procurement situation.
2. Cost Analysis entails the review and evaluation of separate cost elements and the proposed profit. A cost analysis is generally conducted to form an opinion on the degree to which the proposed cost, including profit, represents what the performance of the scope of work should cost. If the CA requests cost elements from firms, you must conduct an analysis of each of the cost elements. If the procurement is such that cost elements are not necessary to request, then do not request this cost information. A cost analysis must be performed when:
 - a) The offeror is required to submit the elements of the estimated cost (i.e. direct labor, overhead, profit, materials, etc.). Sometimes these cost elements are required in professional or architectural and engineering services;
 - b) Adequate price competition is lacking;
 - c) A sole source procurement is required; and
 - d) Contract amendments or change orders as necessary.
3. If the procurement is funded by a FTA grant, the CA should refer to the FTA Circular 4220.1F for guidance on conducting the cost analysis. Cost principles must be consistent with federal cost principles including the allowability and allocability of costs. For contracts other than Architectural/Engineering contracts, if the contractor does not have an approved government indirect cost rate agreement, the contract's dollar value should determine how that rate is verified.

Rationale for Procurement Type

Element 42



Date: April 22, 2010

To:

From:

Subject: **PROCUREMENT PLAN**

Please review the procurement plan for the subject _____ and advise your concurrence with the evaluation criteria and contract elements. Include suggested evaluation team members and/or comments.

Procurement Type: RFP IFB

Justification (explain the rationale for using the particular procurement type):

Evaluation Criteria:

PROPOSAL	WEIGHT
Qualifications of the Firm	
Staffing/Project Organization	
Work Plan	
Cost	
Justification:	

Procurement Plan, RFP Page 2

Contract Type: Time & Expense CTO Based Firm Fixed Price

Justification (explain the rational for using the particular contract type):

Retention: Yes % No N/A

Prevailing Wages: Yes \$ No N/A

Liquidated Damages: Yes \$ No N/A

P.M. to provide support documentation identifying how the LD amount was established.

Procurement Schedule: Attached

Suggested Evaluation Team Members:

5-Members are required over \$250k

Internal Evaluators:

External Evaluators:

Contract Term: (Include Option Years) Years thru

Funding Source: Local Measure M Federal (CMAQ)

Dollar Amount: Initial Term \$ Option Term \$

Independent Cost Estimate Received: Yes No

Requisition Received: Yes # No

DBE Goal: Yes No

Comments:

Project Manager Concurrence:

Name/Title

Date

CAMM Section/Department Manager Concurrence:

Name/Title

Date

Cc: , ,

Advanced Payments

Policy

Procedures

Element 45

responsible bidder.

D. Architectural and Engineering Services Policy

1. Architectural and Engineering (A&E) applies to procurements of professional consultants for engineering, architectural, land surveying or other support services.
2. A&E services must be competitively solicited and evaluated based solely on technical merit, pursuant to the state and/or federal Brooks Act.
3. A&E services are procured through the Request for Proposal (RFP) procedure.
4. Only the highest rank firms' cost proposal will be reviewed for fair and reasonableness and included in the final negotiated and approved contract.

E. Payment Policy

1. Contract funds should not be expended prior to completion of contract.
 - a) Payment for additional work is not allowed by check or payment request.
 - b) A contract amendment must be created prior to all additional work that requires any type of fee or payment.
2. Any payment over \$2,500 will require a Payment Request Form as a cover sheet for payments that do not require or have a formal contract, purchase order, cooperative agreement or travel expense report.
3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.
4. Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or

CAMM Procedures

sheet only for payments that do not require or have a formal Contract, Purchase Order, Coop Agreement or Travel Expense Report.

3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.

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The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or increase the contract price beyond the funds obligated under the contract.

Progress Payment

Policy

Procedures

Element 46

responsible bidder.

D. Architectural and Engineering Services Policy

1. Architectural and Engineering (A&E) applies to procurements of professional consultants for engineering, architectural, land surveying or other support services.
2. A&E services must be competitively solicited and evaluated based solely on technical merit, pursuant to the state and/or federal Brooks Act.
3. A&E services are procured through the Request for Proposal (RFP) procedure.
4. Only the highest rank firms' cost proposal will be reviewed for fair and reasonableness and included in the final negotiated and approved contract.

E. Payment Policy

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 - a) Payment for additional work is not allowed by check or payment request.
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2. Any payment over \$2,500 will require a Payment Request Form as a cover sheet for payments that do not require or have a formal contract, purchase order, cooperative agreement or travel expense report.
3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.
4. **Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.**

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or

increase the contract price beyond the funds obligated under the contract.

F. Construction Change Orders Policy

1. The Authority shall comply with the California Public Contract Code, Section 20142. Amendments to construction contracts may be authorized by the Chief Executive Officer as follows:

- a) \$5,000 per change when the total amount of the original contract does not exceed \$50,000, or
- b) Ten (10) percent of the amount of any original contract that exceeds \$50,000 but does not exceed \$250,000, or
- c) For contracts greater than \$250,000, the change shall not exceed \$25,000, plus five (5) percent of the amount of the original contract in excess of \$250,000.

2. Changes in excess of \$150,000 require Board approval.

G. Design-Build Policy

1. Design-Build procurement method consists of contracting for the design and construction simultaneously with a contract award to a single contractor, joint venture, team or partnership that will be responsible for both the design and construction.

2. To determine what procurement method will be used for the design-build procurement, various activities must be separated and classified as design or construction activities, then the total value of each must be estimated. If the construction costs of a design-build project are the predominant costs, then a sealed bid method must be used for the entire procurement. If the design costs for the design-build procurement are the predominant costs, then a qualification based procurement method must be used (see Architectural and Engineering Services policy). For whichever method of procurement is determined, the Authority must follow the state and federal laws for that particular procurement method and document in the contract file how the determination was made.

H. Revenue Contracts Policy

1. A revenue contract is any third party contract whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities utilizing locally funded or FTA funded assets.

2. The requirements for competitive negotiated procurements apply to all revenue generating contracts. If the revenue contract uses FTA funds, all FTA requirements as specified in Circular 4220.IF apply.

CAMM Procedures

sheet only for payments that do not require or have a formal Contract, Purchase Order, Coop Agreement or Travel Expense Report.

3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs. The Authority may also pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.

4. Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or increase the contract price beyond the funds obligated under the contract.

Piggybacking

Element 50

Virginia Abadessa

From: Geiger, Brian [geigerb@samtrans.com]
Sent: Thursday, February 05, 2009 11:20 AM
To: Tom Meng
Subject: RE: Orange Cty Request for Information About 27' Cutaway Buses
Attachments: Orange county waiver and release for piggyback of cutaway buses.DOC

Mt Meng:

I'm in receipt of your letter requesting 33 cutaways and 2 options of 11 each, which I will reserve for you. Attached is the Waiver of Release Form for 33. Print it on your letterhead, sign and return to my attention. To expedite, you can either scan and email it back to me or fax it to my attention at 650-508-6498. Drop the original in the mail to address below my name.

BRIAN GEIGER
Contract Officer, Contracts & Procurement
San Mateo County Transit District
1250 San Carlos Ave.; San Carlos, Ca 94070

samtrans CALTRAIN TA

From: Geiger, Brian
Sent: Tuesday, October 28, 2008 3:36 PM
To: 'Tom Meng'
Cc: Vigil, Juanita
Subject: RE: Request for Information About 27' Cutaway Buses

Tom:

It was a pleasure speaking with you.

We do have 44 cutaways available. Please find attached wavier. When you are ready, print it on your letterhead, sign and return to my attention. To expedite, you can fax it to my attention at 650-508-6498 and drop the original in the mail.

Also, I am mailing you the documents requested on a CD. You should have them shortly.

If there is anything else you need, feel free to ask.

Sincerely,

BRIAN GEIGER
Contract Officer, Contracts & Procurement
1250 San Carlos Ave.; San Carlos, Ca 94070
samtrans CALTRAIN TA

From: Tom Meng [mailto:TMeng@octa.net]
Sent: Tuesday, October 28, 2008 3:23 PM
To: Geiger, Brian
Cc: Tony Chavira
Subject: Request for Information About 27' Cutaway Buses

Brian

The OCTA is looking at the possibility of riding your bid for 44 cutaway buses. Please send the information we talked about today to the address below.

Thanks

Thomas C. Meng, C.P.M.
600 Main Street, 4th Floor
Orange, CA 92868
tmeng@octa.net
(714) 560-5628

Piggybacking Worksheet

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. Does the contract term comply with the five-year term limit established by FTA?		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See BPPM Section 9.2.1.		

Termination Clause

Element 56

1 the decision of any AUTHORITY official or representative on a question of law, which questions shall be
 2 settled in accordance with the laws of the state of California.

3 **ARTICLE 14. TERMINATION**

4 A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or
 5 part, by giving CONSULTANT written notice thereof. Upon termination, AUTHORITY shall pay
 6 CONSULTANT its allowable costs incurred to date of that portion terminated. Said termination shall be
 7 construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal
 8 Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to
 9 termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said
 10 notice shall be given to CONSULTANT in accordance with the provisions of the FAR referenced above
 11 and Article 8, herein. Upon receipt of said notification, CONSULTANT agrees to comply with all
 12 applicable provisions of the FAR pertaining to termination for convenience.

13 B. AUTHORITY may terminate this Agreement for CONSULTANT's default if a federal or state
 14 proceeding for the relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT
 15 makes an assignment for the benefit of creditors, or for cause if CONSULTANT fails to perform in
 16 accordance with the scope of work or breaches any term(s) or violates any provision(s) of this
 17 Agreement and does not cure such breach or violation within ten (10) calendar days after written notice
 18 thereof by AUTHORITY. CONSULTANT shall be liable for any and all reasonable costs incurred by
 19 AUTHORITY as a result of such default or breach including, but not limited to, procurement costs of
 20 the same or similar services defaulted by CONSULTANT under this Agreement. Such termination shall
 21 comply with CFR Title 48, Chapter 1, Part 49, of the FAR.

22 **ARTICLE 15. INDEMNIFICATION**

23 CONSULTANT shall indemnify, defend and hold harmless AUTHORITY, its officers, directors,
 24 employees and agents from and against any and all claims (including attorneys' fees and reasonable
 25 expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage
 26 to or loss of use of property caused by the negligent acts, omissions or willful misconduct by

CONSULTANT, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement.

ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

B. AUTHORITY hereby consents to CONSULTANT's subcontracting portions of the Scope of Work to the parties identified below for the functions described in CONSULTANT's proposal. CONSULTANT shall include in the subcontract agreement the stipulation that CONSULTANT, not AUTHORITY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONSULTANT.

Subcontractor Name/Addresses

Subcontractor Amounts

.00

.00

ARTICLE 17. AUDIT AND INSPECTION OF RECORDS

CONSULTANT shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to CONSULTANT's accounting books, records, payroll documents and facilities of the CONSULTANT which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. CONSULTANT shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONSULTANT's performance hereunder and for a period of four (4) years from the date of final

Civil Rights Clause

Element 56

1 against any employee or applicant for employment because of race, religion, color, sex, age or national
 2 origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that
 3 employees are treated during their employment, without regard to their race, religion, color, sex, age or
 4 national origin. Such actions shall include, but not be limited to, the following: employment, upgrading,
 5 demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
 6 forms of compensation; and selection for training, including apprenticeship.

7 **ARTICLE 22. CIVIL RIGHTS ASSURANCE**

8 During the performance of this Agreement, CONSULTANT, for itself, its assignees and
 9 successors in interest agree as follows:

10 A. Compliance with Regulations: CONSULTANT shall comply with the Regulations relative to
 11 nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter,
 12 "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time,
 13 (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a
 14 part of this Agreement.

15 B. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the
 16 Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and
 17 retention of subcontractors, including procurements of materials and leases of equipment. The
 18 CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by
 19 Section 21.5 of the Regulations, including employment practices when the Agreement covers a
 20 program set forth in Appendix B of the Regulations.

21 C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all
 22 solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be
 23 performed under a subcontract, including procurements of materials or leases of equipment, each
 24 potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's
 25 obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of
 26 race, color, or national origin.

1 D. Information and Reports: CONSULTANT shall provide all information and reports required
 2 by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records,
 3 accounts, other sources of information, and its facilities as may be determined by the AUTHORITY to
 4 be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any
 5 information required of a CONSULTANT is in the exclusive possession of another who fails or refuses
 6 to furnish this information the CONSULTANT shall so certify to the AUTHORITY as appropriate, and
 7 shall set forth what efforts it has made to obtain the information.

8 E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with
 9 nondiscrimination provisions of this Agreement, the AUTHORITY shall impose Agreement sanctions as
 10 it may determine to be appropriate, including, but not limited to:

11 1. Withholding of payments to the CONSULTANT under the Agreement until the
 12 CONSULTANT complies; and/or

13 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

14 F. Title VI of the Civil Rights Act: In determining the types of property or services to acquire, no
 15 person in the United States shall, on the grounds of race, color, or national origin, be excluded from
 16 participation in, be denied the benefits of, or otherwise be subjected to discrimination under any
 17 program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of
 18 1964, as amended, 42 U.S.C. Sections 2000d *et seq.* and DOT regulations, "Nondiscrimination in
 19 Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil
 20 Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent
 21 Guidelines for FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing
 22 DOT's Title VI regulations.

23 G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101
 24 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities,
 25 and services of public entities, as well as imposes specific requirements on public and private providers
 26 of transportation.

1 of transportation.

2 H. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A)
 3 through (H) in every subcontract, including procurements of materials and leases of equipment, unless
 4 exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such
 5 action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of
 6 enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event
 7 a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier
 8 as a result of such direction, the CONSULTANT may request the AUTHORITY to enter into such
 9 litigation to protect the interests of the AUTHORITY, and, in addition, the CONSULTANT may request
 10 the United States to enter into such litigation to protect the interests of the United States.

11 **ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISES**

12 Race-Neutral DBE Participation

13 **INTERNAL NOTE: USE THE FOLLOWING LANGUAGE IF CONSULTANT HAS PROPOSED TO
 UTILIZE DBES IN THE PERFORMANCE OF THE CONTRACT.**

14 At the time of contract execution, the CONSULTANT committed to utilize
 15 DBE(s) in the performance of this DOT-assisted contract, and further agrees to
 16 ensure that DBE subcontractors listed on the "***DBE Race-Neutral
 Participation Listing***" (***Exhibit D-2***) perform work and/or supply materials in
 17 accordance with original commitments, unless otherwise directed and/or
 18 approved by the Authority prior to the CONSULTANT effectuating any changes
 to its race-neutral DBE participation commitment(s) (*Refer to Subsection H:
 "Performance of DBE Subcontractors"*).

19 **INTERNAL NOTE: USE THE FOLLOWING LANGUAGE IF CONSULTANT HAS NOT PROPOSED
 TO UTILIZE DBES IN THE PERFORMANCE OF THE CONTRACT.**

20 At the time of contract execution, the CONSULTANT did not commit to utilize
 21 DBE(s) in the performance of this DOT-assisted contract. However, in the
 22 event DBE(s) are utilized in the performance of this contract, the
 23 CONSULTANT shall comply with reporting requirements delineated under
***Section E: "Race-Neutral DBE Submission and Ongoing Reporting
 Requirements (Post-Award)"***.

24 A. In accordance with federal financial assistance agreements with the U.S. Department of
 25 Transportation (U.S. DOT), the Orange County Transportation Authority (AUTHORITY) has adopted a
 26 Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part
 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs".

1 effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter
 2 of necessity, as defined by the Fly America Act. CONSULTANT shall submit, if a foreign air carrier was
 3 used, an appropriate certification or memorandum adequately explaining why service by a U.S. carrier
 4 was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a
 5 certificate of compliance with the Fly America requirements. CONSULTANT agrees to include the
 6 requirements of this section in all subcontracts that may involve international air transportation.

7 **ARTICLE 40. BUY AMERICA REQUIREMENTS**

8 CONSULTANT agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide
 9 that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-
 10 funded projects are produced in the United States, unless a waiver has been granted by FTA or the
 11 product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final
 12 assembly in the United States, for 15 passenger vans and 15 passenger wagons produced by Chrysler
 13 Corporation, microcomputer equipment, software and small purchases (currently less than \$100,000)
 14 made with capital, operating or planning funds. Separate requirements for rolling stock are set out at
 15 5323(j)(2)© and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in
 16 the United States and have a 60 percent domestic content.

17 **ARTICLE 41. SEISMIC SAFETY REQUIREMENTS**

18 CONSULTANT agrees that any new building or addition to an existing building will be designed
 19 and constructed in accordance with the standards for Seismic Safety required in Department of
 20 Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent
 21 required by the regulation. CONSULTANT also agrees to ensure that all work performed under this
 22 contract including work performed by a subcontractor is in compliance with the standards required by
 23 the Seismic Safety Regulations and the certification of compliance issued on the project.

24 **ARTICLE 42. DEBARMENT AND SUSPENSION**

25 This contract is a covered transaction for purposes of 49 CFR Part 29. As such, CONSULTANT
 26 is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates,

1 as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

2 CONSULTANT is required to comply with 49 CFR 29, Subpart C and must include the
3 requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

4 This Agreement shall be made effective upon execution by both parties.

5 IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C- to be
6 executed on the date first above written.

7 **CONSULTANT**

ORANGE COUNTY TRANSPORTATION AUTHORITY

8 By _____

By _____

9 Will Kempton
10 Chief Executive Officer

11 APPROVED AS TO FORM:

12 By _____

13 Kennard R. Smart, Jr.
14 General Counsel

15 APPROVED:

16 By _____

17 Date _____
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26

FEDERAL CONTRACT CLAUSES

DEFINITIONS

Orange County Transportation Authority, (hereinafter referred to as "AUTHORITY").

_____, (hereinafter referred to as "VENDOR").

The following provisions apply to all purchases regardless of its value::

ARTICLE 1. FEDERAL CHANGES

VENDOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between the AUTHORITY and FTA , as they may be amended or promulgated from time to time during this Agreement. VENDOR's failure to comply shall constitute a material breach of contract.

ARTICLE 2. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY and VENDOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the AUTHORITY, VENDOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. VENDOR agrees to include these requirements in all of its subcontracts.

ARTICLE 3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. VENDOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this Agreement, VENDOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FTA assisted project for which this Agreement's work is being performed. VENDOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on the VENDOR to the extent the Federal Government deems appropriate.

B. VENDOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the VENDOR, to the extent the Federal Government deems appropriate. VENDOR agrees to include this requirement in all of its subcontracts.

ARTICLE 4. CIVIL RIGHTS ASSURANCE

During the performance of this Agreement, VENDOR, for itself, its assignees and successors in interest agree as follows:

A. Compliance with Regulations: VENDOR shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

B. Nondiscrimination: VENDOR, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The VENDOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the VENDOR for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the VENDOR of the VENDOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: VENDOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the AUTHORITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a VENDOR is in the exclusive possession of another who fails or refuses to furnish this information the VENDOR shall so certify to the AUTHORITY as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the VENDOR's noncompliance with nondiscrimination provisions of this Agreement, the AUTHORITY shall impose Agreement sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the VENDOR under the Agreement until the VENDOR complies; and/or

2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of

EXHIBIT A

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d *et seq.* and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title VI regulations.

G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

H. Incorporation of Provisions: VENDOR shall include the provisions of paragraphs (A) through (H) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The VENDOR shall take such action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a VENDOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the VENDOR may request the AUTHORITY to enter into such litigation to protect the interests of the AUTHORITY, and, in addition, the VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 5. DISADVANTAGED BUSINESS ENTERPRISES

A. In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (AUTHORITY) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs". The project is subject to these stipulated regulations. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

1. Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority's DOT-assisted contracting opportunities.
2. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
3. Ensure non-discrimination in the award and administration of AUTHORITY's DOT-assisted contracts.
4. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
5. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
6. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

B. VENDOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section that are defined in

EXHIBIT A

49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

C. AUTHORITY's New Race-Neutral DBE Policy Implementation Directives: Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, the Authority has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, AUTHORITY does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. VENDOR shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, VENDOR shall adhere to race-neutral DBE participation commitment(s) made at the time of contract award.

D. Definitions: The following definitions apply to the terms as used in these provisions:

1. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

3. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

e. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

f. Women, regardless of ethnicity or race.

EXHIBIT A

4. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

5. "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the VENDOR.

6. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

7. "Other Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or AUTHORITY to meet the social and economic disadvantage criteria described below.

a. Social Disadvantage: The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

i. The individual must demonstrate that he/she has personally suffered social disadvantage.

ii. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

iii. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

iv. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

v. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

b. Economic Disadvantage

i. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

ii. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth

- personal and business income and profits

E. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award).

VENDOR shall complete and submit the following DBE exhibits (forms) at the times specified: "Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103). If VENDOR is a DBE firm and/or has proposed to utilize DBE firms, VENDOR will be required to complete and submit a Form 103 to AUTHORITY by the 10th of each month until completion of the contract to facilitate reporting of race-neutral DBE participation, following the first month of contract activity. VENDOR shall report the total dollar value paid to DBEs for the applicable reporting period. VENDOR shall also report the DBE's scope of work and the total subcontract value of commitment for each DBE reported. VENDOR is advised not to report the participation of DBEs toward VENDOR's race-neutral DBE attainment until the amount being counted has been paid to the DBE. Upon completion of the contract, VENDOR will be required to prepare and submit to the Authority a "Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual DBE race-neutral attainments. VENDOR shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

F. DBE Eligibility and Commercially Useful Function Standards : A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

G. DBE Crediting Provisions : When a DBE is proposed to participate in the contract, either as a prime VENDOR or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If VENDOR is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment. VENDOR is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for

equipment, materials and supplies required under the Contract, obtained from a regular dealer; or One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer. The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward the prime VENDOR's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including: Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract; Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies; Fees and commissions charged for providing any insurance specifically required in the performance of the Contract. VENDOR may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows: The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. If VENDOR listed a non-certified DBE 1st tier subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

H. Performance of DBE Subcontractors: DBE subcontractors listed by VENDOR in its "DBE Race-Neutral Participation Listing" (Exhibit D-2) submitted at the time of proposal submittal shall perform the work and supply the materials for which they are listed, unless the VENDOR has received prior written authorization from the Authority to perform the work with other forces or to obtain the materials from other sources. VENDOR shall provide written notification to the AUTHORITY in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

I. Additional DBE Subcontractors: In the event VENDOR identifies additional DBE subcontractors or suppliers not previously identified by VENDOR for race-neutral DBE participation under the contract, VENDOR shall notify the Authority by submitting "Request for Additional DBE Firm" to enable VENDOR to capture all race-neutral DBE participation. VENDOR shall also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified

value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

J. DBE Certification Status: If a listed DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify VENDOR in writing with the date of decertification. If a non-DBE subcontractor becomes a certified DBE during the life of the project, the DBE subcontractor shall notify VENDOR in writing with the date of certification. VENDOR shall furnish the written documentation to AUTHORITY in a timely manner.

K. VENDOR's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, VENDOR shall affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, VENDOR shall affirm that they will consider, and utilize subcontractors and vendors, in a manner consistent with non-discrimination objectives.

ARTICLE 6. ACCESS TO RECORDS AND REPORTS

VENDOR shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to VENDOR's accounting books, records, payroll documents and facilities of the VENDOR which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. VENDOR shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during VENDOR's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in this Agreement. VENDOR shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 7. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. VENDOR shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

ARTICLE 8. ENERGY CONSERVATION REQUIREMENTS

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

ARTICLE 9. FLY AMERICA REQUIREMENTS

CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipient of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

ARTICLE 10. TRANSPORTATION OF EQUIPMENT, MATERIALS OR COMMODITIES BY OCEAN VESSEL

A. CONTRACTOR shall utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. CONTRACTOR shall furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipping originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of lading in English for each shipment of cargo described in paragraph A of this Article to AUTHORITY (through the prime CONTRACTOR in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

ARTICLE 11. PROHIBITED INTERESTS

A. VENDOR covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B. No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Agreement or to the benefits thereof.

ARTICLE 12. ALCOHOL AND DRUG POLICY

A. VENDOR agrees to establish and implement an alcohol and drug program that complies with 41 U.S.C sections 701-707, (the Drug Free Workplace Act of 1988), which is attached to this Agreement as Exhibit B, and produce any documentation necessary to establish its compliance with sections 701-707.

B. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

ARTICLE 13. PRIVACY ACT

VENDOR shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, VENDOR agrees to obtain the express consent of the Federal Government before the VENDOR or its employees operate a system of records on behalf of the Federal Government. VENDOR understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

ARTICLE 14. CONFLICT OF INTEREST

VENDOR agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the VENDOR is unable, or potentially unable to render impartial assistance or advice to the Authority; VENDOR's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or the VENDOR has an unfair competitive advantage. VENDOR is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the VENDOR. VENDOR is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the VENDOR. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

ARTICLE 15. CODE OF CONDUCT

VENDOR agrees to comply with the AUTHORITY's Code of Conduct as it relates to Third Party contracts which is hereby referenced and by this reference is incorporated herein. VENDOR agrees to include these requirements in all of its subcontracts.

ARTICLE 16. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator/Buyer responsible for this procurement. Any protest filed by the vendor in connection with this solicitation must be submitted in accordance with the Authority's written procedures.

The following additional provisions apply to all purchases over \$10,000

ARTICLE 17. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving VENDOR written notice thereof. Upon termination, AUTHORITY shall pay VENDOR its allowable costs incurred to date of that portion terminated. Said termination shall be construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be given to VENDOR in accordance with the provisions of the FAR referenced above. Upon receipt of said notification, VENDOR agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

B. AUTHORITY may terminate this Agreement for VENDOR's default if a federal or state proceeding for the relief of debtors is undertaken by or against VENDOR, or if VENDOR makes an assignment for the benefit of creditors, or for cause if VENDOR fails to perform in accordance with the scope of work or breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within ten (10) calendar days after written notice thereof by AUTHORITY. VENDOR shall be liable for any and all reasonable costs incurred by AUTHORITY as a result of such default or breach including, but not limited to, reprourement costs of the same or similar services defaulted by VENDOR under this Agreement. Such termination shall comply with CFR Title 48, Chapter 1, Part 49, of the FAR.

ARTICLE 18. RECYCLED PRODUCTS

VENDOR shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247. VENDOR agrees to include this requirement in all of its subcontracts.

The following additional provisions apply to all purchases over \$25,000

ARTICLE 19. DEBARMENT & SUSPENSION:

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS - PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS**

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded, as defined in the Federal Transit Administration (FTA) Circular 2015.1, dated April 28, 1989, may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, the Authority, acting on behalf of the District, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

A certification process has been established by 49 CFR Part 29, as a means to ensure that debarred suspended or voluntarily excluded persons or firms do not participate in Federally assisted projects. The inability to provide the required certification will not necessarily result in denial of participation in a covered transaction. A person or firm that is unable to provide a positive certification as required by this solicitation, must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

Submission Requirements

Each Bidder shall complete the certification, "Certification of Primary Participant Regarding Debarment, Suspension and other Responsibility Matters," included in this IFB, for itself and its principals, and submit this certification with its bid. Failure to do so may result in rejection of the bid.

If the Bidder plans to use subcontractors on the project, the Bidder, shall have all subcontractors with contracts in excess of \$100,000 complete a certification for lower-tier participation and submit the certification within fifteen (15) days after award.

If a prime or subcontractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, immediate written notice shall be provided to the Authority.

The following additional provisions apply to all purchases over \$100,000:

ARTICLE 20. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AUTHORITY's Director, Contracts Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Director, CAMM, shall be final and conclusive.

B. The provisions of this Article shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

C. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement,

however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.

ARTICLE 21. CLEAN WATER REQUIREMENTS

VENDOR shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. VENDOR shall report each violation to AUTHORITY and understands and agrees that the AUTHORITY who will in turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office. VENDOR agrees to include this requirement in all of its subcontracts.

ARTICLE 22. CLEAN AIR

VENDOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. VENDOR shall report each violation to AUTHORITY, who will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. VENDOR agrees to include this requirement in all of its subcontracts.

ARTICLE 23. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AUTHORITY's Director, Contracts Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, CAMM, shall be final and conclusive.

B. The provisions of this Article shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, CONSULTANT shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

C. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM. This disputes clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.

ARTICLE 24. LOBBYING

Vendors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

ARTICLE 25. BUY AMERICA

A. Vendor is directed to the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) Sections 1041(a) and 1048(a) and the regulations adopted pursuant thereto. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this Project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

B. A Certificate of Compliance, conforming to the provisions of this Article shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions listed herein.

C. The requirements imposed by law and regulations do not prevent a minimal use of foreign steel and iron materials of the total combined cost of the materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. VENDOR shall furnish the AUTHORITY acceptable documentation of the quantity and value of the foreign steel and iron prior to incorporating the materials in the work.



BOARD OF DIRECTORS

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Gregory T. Winterbottom
Director

Cindy Quon
Governor's
Ex-Officio Member

June 28, 2010

Mr. Nadeem S. Tahir, P.E., CCM.
U.S.D.O.T. Federal Transit Administration, Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105

Subject: Orange County Transportation Authority Procurement System Review

Dear Mr. Tahir:

Attached are the revisions to the corrective actions that the Orange County Transportation Authority (OCTA) has made to comply with the Procurement System Review performed by Miligan & Company, which was issued in June 2010. These revisions should satisfy the requirements identified in the review.

If you should have any questions regarding any of the corrective actions, please contact Kathleen O'Connell, Director of Internal Audit at (714) 560-5669 or Virginia Abadessa, Director of Contracts Administration and Materials Management, at (714) 560-5623.

Sincerely,

Will Kempton
Chief Executive Officer

WK:va
Enclosure

c: Jeffrey Davis, FTA

CHIEF EXECUTIVE OFFICE

Will Kempton
Chief Executive Officer

Time and Material Guidance Procedure

Procedure

Element 6, No. 1

(Revisions to corrections in blue ink.)

B. Competitive Negotiated Procurements – Request for Proposal (RFP) Policy

1. The RFP process is a competitive proposal method used when proposals can be solicited from an adequate number of qualified vendors. Proposals are evaluated on a number of factors including price, which are identified in the solicitation along with their relative importance. Award is made to the responsible firm whose proposal is most advantageous to OCTA with price and other factors considered. The Director of CAMM has the authority to cancel a solicitation. A cancellation notice will be provided.

2. The requesting department must always initiate a requisition for services, scope of work, and an independent cost estimate prior to the start of the RFP process. Imposing unreasonable requirements on proposers shall be prohibited.

3. The following conditions must exist in order to use a competitive negotiated procurement method:

a) There must be a complete and adequate scope of work which would allow for competition.

b) The competitive negotiated procurement process does not require award to the lowest bidder.

c) The contract award amount, whether a firm fixed price or cost reimbursement, is determined based on the original vendor proposal, which may be changed using a Best and Final Offer (BAFO) and/or through negotiation between the two parties.

(1) Discussions or negotiations may also be used to address technical requirements.

d) **If time and material contract is to be used, a determination must be made in writing that no other type of contract is suitable. The determination must demonstrate that it is not possible at the time of contract execution to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Each Time and Expense Agreement shall include a clause that specifies a ceiling price that shall not be exceeded by the contractor, except at its own risk.**

e) Cost plus a percentage of cost type contract shall be prohibited nor shall a cost plus percentage of construction cost type contract be used in pricing Architectural/Engineering contracts.

4. If the requirement is for an Architectural/Engineering and/or Professional service, the following shall apply:

a) Architectural and Engineering services must be competitively solicited and evaluated based solely on technical merit. Cost is not an evaluated factor.

b) Board authorization shall be required for release of RFPs on non-budgeted projects greater than \$25,000 but not on specifically budgeted projects.

c) Board approval of selection of the top ranked firms shall be required for budgeted procurements greater than \$250,000 and non-

Liquidated Damages

Policy

Procedures

Element 6, No. 13

(Revisions to corrections in blue ink.)

CAMM Policy Manual

registered in the County of Orange in the State of California.

7. Bid guarantees, performance bonds and payment bonds shall not be required unless the procurement involves equipment or services of a critical nature to the operations of the Authority and/or is specifically manufactured for the Authority thereby making procurement from another source difficult.

8. The Authority may use liquidated damages if it can reasonably expect to suffer damages from late completion or delivery, and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time. A memo detailing how the liquidating damages were determined must be included in the contract file. The rate must be specified in the procurement solicitation as well as in the contractor's agreement.

E. Insurance Requirements Policy

CAMM is responsible for ensuring that all insurance requirements for procurements are reviewed and approved by Risk Management, based on the following criteria.

1. All procurements \$100,000 or greater, regardless of procurement type, must be approved by Risk Management.
2. All procurements for the following must be approved by Risk Management:
 - a) Vehicle purchases
 - b) Public works
 - c) Environmental services
 - d) Architectural and Engineering
 - e) Paratransit services

F. Term of Agreements Policy

1. Multi-year contracts shall be utilized when appropriate.
2. Contract terms can exceed a total of five (5) years when:
 - a) Requesting departments document rationale for contracts longer than five (5) years; and
 - b) Board of Directors' prior concurrence is required before a contract can extend beyond five (5) years.
3. For FTA funded rolling stock, five (5) years is the maximum contract term.

CAMM Procedures

- (1) The CA shall refer to the CAMM Bonding Requirements Policy to determine Bonding requirements
 - e) The Authority may use liquidated damages if it can reasonably expect to suffer damages from late completion or delivery, and the extent or amount of such damages would be difficult or impossible to determine. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time. A memo detailing how the liquidating damages were determined must be included in the contract file. The rate must be specified in the procurement solicitation as well as in the contractor's agreement.
7. Board approval is required to release IFB if:
 - a) Requisition is in excess of \$1,000,000, or
 - b) Unbudgeted and over \$25,000
 - c) If Board approval is required, the requesting department will prepare a Staff Report which should include:
 - (1) Reason for the request of the Board of Directors' approval
 - (2) Problem or issue to be solved
 - (3) Project objectives
 - (4) End product of the project
 - (5) Description of the services or goods to be performed or equipment to be procured
 - (6) Identify budget information
 - (7) Fiscal impact
 - d) The CA will prepare the Procurement Approach section and draft IFB to be reviewed by CAMM Management and included in the Staff Report
 8. The Staff Report will be reviewed and approved by managers and executive division directors
 9. CAMM shall post the IFB on CAMMNET
 - a) CA shall obtain bid list from CAMMNET to be included in the contract file
 - b) Although the preferred method is to post all solicitations on CAMMNET, a CA may issue a solicitation without posting it on CAMMNET, with prior approval by CAMM Management
 - c) Hard copies of the IFB package should be made available to those firms requesting in writing a copy of the IFB
 10. The CA must prepare and submit a public notice in a newspaper of general circulation for two (2) consecutive weeks prior to the date set for bid closing
 - a) A CAMM Manager, or authorized representative, will review the IFB package prior to its release to the public
 - b) The CA is responsible for submitting the approved draft IFB for inclusion in Board Report. The published notice shall include:
 - (1) General description of the service or goods to be purchased
 - (2) Directions on how to obtain the IFB
 - (3) Bid submittal location

Responsible Contractor

Procedures

Element 18

(Revisions to corrections in blue ink.)

CAMM Procedures

1. Sole Source purchases must comply with the Sole Source Policy and should be carefully assessed by the requestor and by CAMM. (See Sole Source Procurement Policy in the CAMM Policy Manual.) The Project Manager shall:
 - a) Provide justification for pursuing procurements on a sole source basis
 - b) Consider additional approvals and timeframe required by this process
 - c) Complete Requisition Process and Sole Source Justification including:
 - (1) Requestor will enter requisition in Ellipse
 - (2) A Sole Source Checklist Form must be completed and signed by the requesting department and submitted to Director of CAMM for review and approval.
 - (3) Prepare and provide an ICE and specifications and other form if necessary
2. Once the sole source has been approved and assigned, the CA shall:
 - a) Send the SOW to the vendor and request a technical proposal and price
 - b) Receive proposal and review with PM. **The CA shall make the determination if the sole source contractor is responsible to perform successfully under the terms and conditions of the Agreement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. The CA shall make a written determination that the contractor is a responsible firm.**
 - c) Perform a cost analysis, including the specific elements of cost and profit if less than \$50,000.
 - d) If greater than \$50,000, the CA shall prepare package for Internal Audit review pursuant to cost and price analysis procedure.
 - e) If not approved, the requestor should prepare the scope of work for competitive solicitation.
 - f) If the item is an associated capital maintenance item as defined in 49 USC &5307(a)(1) the CA must first certify in writing:
 - (1) That such manufacturer or supplier is the only source for such item; and
 - (2) That the price of such item is no higher than the price paid for such item by like customers
 - g) CA will negotiate with the vendor (if necessary)
 - (1) CAMM and requesting department will review CAMM or Internal Auditor comments (if applicable)
 - (2) CAMM and requesting department will prepare negotiating strategy and conduct negotiations (as necessary) and document the contract file accordingly
3. If Board Approval is required, a Staff Report will be prepared
 - a) PM should document relevant information, identify budget, include Internal Audit report if required with approval signatures
 - b) CA shall prepare Procurement Approach section of the Staff Report which shall include an evaluation of the reasonableness of cost elements or total price

CAMM Procedures

- (4) Location, last day and hour that bids will be accepted
 - (5) Identification of funding source
 - (6) DBE goal percentage if applicable
11. Conduct Pre-Bid Meeting and/or appropriate job walk
- a) CA will arrange meeting to include DBE Officer (if applicable) and requesting department representatives
 - b) Respond to contractor calls, conduct site visits and issue addenda as needed
12. CA is responsible for issuance of addendum which may include:
- (1) Changes in scope of work/specifications, bid instructions, and/or project time frame,
 - (2) Approved equal request,
 - (3) Responses to written questions received from potential bidders, and
 - (4) Critical information raised during pre-bid meetings
- b) All addenda must be issued in writing and posted on CAMMNET
- (1) Those firms who are currently registered on CAMMNET and have identified the appropriate commodity codes should be notified electronically of the Addendum release
 - (2) If the solicitation was not posted on CAMMNET, the addendum should be mailed to those firms who are currently registered within the commodity codes utilized
 - (3) Hard copies of the Addendum should be made available for those firms who request it in writing
13. Sealed bids shall remain unopened and stored in a secure location until the public opening
14. The CA shall open the bids publicly at the time and place specified in the IFB package, and each bid shall specify:
- a) Time and date the bid was submitted
 - b) Time and date the bid was opened
 - c) Signature of the person opening the bid
 - d) Signature of the person witnessing the opening
 - e) Sign in sheet for those attending public bid opening
 - f) The public may review bids at the time of opening, and during the evaluation period up to the award of the bid
15. Bids and amendments to bids, received after the date and time specified in the IFB will be rejected by the Authority as non-responsive and returned to the Bidders unopened. *If the lowest responsive bidder possesses at the time of contract award, the ability to perform successfully and a willingness to comply with the terms and conditions of the proposed Agreement, the bidder is considered responsible. The CA shall document that the contractor is a responsible firm.*
16. Each bid should be recorded, reviewed and evaluated based on the following:

CAMM Procedures

- b) Explain evaluation process
- c) Review score sheets

16. Verify and Evaluate Technical Offers

CA will check references on all offers received. DBE Officer will evaluate compliance to DBE goal.

17. Evaluation Process

- a) Prior to receiving the proposals, the Evaluation Committee members shall be required to complete a Declaration of Impartiality and Confidentiality Form to safe guard against unauthorized disclosure of information as well as identify any potential conflict of interest. Any Disclosure of Conflicts of Interest shall be forwarded to CAMM Management for review and disposition.
- b) The Committee shall read and score each proposal as well as provide narrative statements to explain the rationale for the scoring
- c) The Committee shall come together as a whole to reveal their scores and discuss the rationale for their decision. *It is the responsibility of the evaluation committee to recommend for award the consultant that possesses the ability to perform successfully under the terms and conditions of the proposed Agreement. Consideration shall be given to such matters as consultant integrity, compliance with public policy, record of past performance and financial and technical resources. The CA shall document in writing the determination that the consultant is a responsible firm.*
- d) A short list of firms, whose technical scores fall into a competitive range, shall be invited to participate in an interview.
- e) Based upon the Evaluation Committee's overall rating for each proposal and establishment of a short list form, the CA will:
 - (1) Check additional references of short listed firms
 - (2) Notify short-listed Firms
- f) If, during the evaluation process, evaluation member(s) requires clarification of a proposal, the CA may request such clarification from the offeror.
 - (1) The offeror will provide such clarification in writing but may not change any part of the proposal as a result of the clarification request; any changed information will be disregarded
- g) For architectural and engineering services only, offeror's qualifications will be evaluated and the most qualified candidate will be selected subject to negotiation of fair and reasonable compensation
 - (1) Price will not be considered as an evaluation factor in determining the most qualified candidate
- h) Project Manager and/or CA may also conduct site visits or demonstrations where appropriate
- i) Interviews shall be conducted with those short listed Firms in the competitive range for all procurements with a total dollar value greater than \$250,000. For those procurements less than \$250,000, interviews

Advanced Payments

Policy

Procedures

Element 45

(Revisions to corrections in blue ink.)

responsible bidder.

D. Architectural and Engineering Services Policy

1. Architectural and Engineering (A&E) applies to procurements of professional consultants for engineering, architectural, land surveying or other support services.
2. A&E services must be competitively solicited and evaluated based solely on technical merit, pursuant to the state and/or federal Brooks Act.
3. A&E services are procured through the Request for Proposal (RFP) procedure.
4. Only the highest ranked firms' cost proposal will be reviewed for fair and reasonableness and included in the final negotiated and approved contract.

E. Payment Policy

1. Contract funds should not be expended prior to completion of contract.
 - a) Payment for additional work is not allowed by check or payment request.
 - b) A contract amendment must be created prior to all additional work that requires any type of fee or payment.
2. Any payment over \$2,500 will require a Payment Request Form as a cover sheet for payments that do not require or have a formal contract, purchase order, cooperative agreement or travel expense report.
3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs.

The Authority may pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.

4. Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is

CAMM Procedures

sheet only for payments that do not require or have a formal Contract, Purchase Order, Coop Agreement or Travel Expense Report.

3. The Authority shall not make advanced payments on any contract, except for contracts for the payment of rents, public utility connections, insurance premiums, software licenses and maintenance agreements and subscriptions and construction mobilization costs.

The Authority may pay advanced costs if there is a sound business reason justifying the advanced payment and adequate security of the payment. If the contract is funded by the FTA, prior written concurrence from the FTA must be received before an advanced payment can be made.

4. Progress Payments – Progress payments are payments for contract work that has not yet been completed. For a fixed price contract, tasks or deliverables will be included in the contract. Progress payments may be made based on the percentage of work completed for each deliverable or task that has not been previously included in a previous invoice.

In order to make progress payments, the contract must include adequate security sufficient enough to protect the Authority's financial interest in the progress payment. Such security may be in the form of withholding a certain percentage from each invoice (i.e. retention amount), performance bonds, use of escrow accounts or letter of credit.

The contractor must submit documentation that justifies the amount of the progress payment and the PM must verify that the documentation submitted is sufficient to approve the payment. The PM may not make progress payments or increase the contract price beyond the funds obligated under the contract.

Federally Required Clauses

Element 56

(Revisions to corrections in blue ink.)

FEDERALLY REQUIRED CLAUSES

(Excluding micro-purchases, except for construction contracts over \$2000)

TYPE OF PROCUREMENT					
CLAUSE	Professional Services/A&E	Contracted Transportation	Rolling Stock Purchase	Construction	Fixed Assets & Equipment
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 for Convenience and for Cause and Remedies to Cure	All	All	All	All	All
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
Suspension and Debarment (clause required)	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America (clause and form required)			>\$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			If involves property transported by ocean vessel	If involves property transported by ocean vessel	If involves property transported by ocean vessel
Fly America	If involves foreign transport or travel by air	If involves foreign transport or travel by air	If involves foreign transport or travel by air	If involves foreign transport or travel by air	If involves foreign transport or travel by air
Davis-Bacon Act				>\$2,000 (including ferry vessels)	

CLAUSE	Professional Services/A&E	Contracted Transportation	Rolling Stock Purchase	Construction	Fixed Assets & Equipment
Contract Work Hours and Safety Standards		>\$2,500 (except transportation services)	>\$2,500	>\$2,000 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings and Additions			New Buildings and Additions	
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	If involves research & development				
Rights in Data and Copyright Requirements	If involves 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

Contract Administrator Signature

Section / Department Manager Signature

Other Matters

Documentation of Approval from the
Board of Directors

RFP Checklist – Page 3 of 4
IFB Checklist – Page 3 of 4
Agreement Breakdown Sheet

(Revisions to corrections in blue ink.)

RFP Checklist

Upon receipt of requisition:

- Contact PM and request scope of work and signed Independent Cost Estimate (ICE)
- Review scope of work – ensure no restrictive requirements

Prepare Procurement Plan:

- Determine procurement method and contract type. Document justification in plan
- Obtain supervisor's and PM's approval and signature
- Book conference rooms (pre-proposal meeting, pre-evaluation meeting, proposal opening)
- Notify DBE Officer to review scope for possible UDBE goal, if federally funded
- Establish evaluation criteria and identify evaluation committee members
- Schedule Board of Directors approval if \$1,000,000 or greater for evaluation criteria and RFP release.

RFP Preparation:

- Identify terms & conditions; ensure retention and termination clauses are included (convenience and cause)
- Include DBE language, requirements and clauses, if applicable and federally funded
- Submit insurance requirements to Risk Manager for approval
- Include consultant safety specifications as required by selected commodity codes, if required.
- Submit draft RFP to Section Manager/Department Manager & PM for approval

Submit Public Notice to O.C. Register three days prior to issuance of solicitation

- Submit to Section Manager for approval
- Once approved, e-mail the OC Register listing advertisement dates (2 dates in 2 consecutive weeks)

Solicitation Package

- Create a PDF of the RFP Solicitation Book
- Post RFP Solicitation on CAMM NET using Solicitation Manager
- Print final RFP and take to Reprographics

Print Bid List (for file) from Solicitation Manager

Prepare:

- Pre-Proposal Meeting Sign in Sheet
- Pre-Proposal Meeting Agenda (handouts)
- Pre-Proposal Meeting Notes/power point presentation

Conduct Pre-Proposal Meeting. Bring solicitation books and business cards.

Issue Addendum with attendee list following pre-proposal meeting

Issue Addenda for responses to written questions from firms.

After Addendum is prepared, be sure to submit to Section Manager/Department Manager and PM for approval, prior to posting on CAMM NET

On the day proposals are submitted, hold a pre-evaluation meeting with evaluation committee to review the evaluation instructions with them. Prepare each of the following and distribute to each member of the evaluation team:

- Notice of Confidentiality and Disclosure form needs to be signed by each member and returned
- Instruction Memo for Evaluation Committee
(Proposals are evaluated by members of evaluation team separately prior to the Evaluation Committee Meeting)
- Score Sheets
- Proposals, copy of the RFP and Addenda

Conduct Proposal Opening

- Verify proposal responsiveness prior to distribution to evaluation team

Prepare Campaign Contribution Memo and submit to Director

Verify RFP requirements of Proposers are met:

- Provide DBE information to DBE Officer and request approval that UDBE goal has been met if Federal Funds
- Conduct Reference Checks on all Proposers
- Run Dun & Bradstreet report
<http://www.dnb.com/us/>
- Check that firms and subcontractors are not debarred (Federal)
<http://www.epls.gov/eplsearch.do>
- Check Engineers and Surveyors (if appropriate)
http://www.dca.ca.gov/pels/l_lookup.htm

Internal Audit (if only one proposal received)

- Provide recommendation, data, and request for audit report and request that a determination if the procurement was competitive. If procurement is \$50,000 or less, this determination will be made by the CA

Conduct Evaluation Committee Meeting

- Discuss scoring and rationale for decision.
- Develop shortlist of firms for interviews or recommend award
- Compile scores and submit to Section Manager /Department Manager for review prior to identifying "Short-List" for interview.

Prepare:

- Letters to unsuccessful firms
- Invitation Letters to Short Listed Firms (reserve rooms for interviews)
- Interview Questions

Interviews Conducted

- Submit all scores to Section Manager/Department Manager for review.

Agenda Package to Department Manager

- Staff Report
- Overall Evaluation Summary
- Score Sheet Matrix
- Source Selection Memo to file
- Cost Price Evaluation, if \$50,000 or less

Staff Report

- Provide Procurement Approach – describe rationale for the recommendation and all required attachments
- Review draft Staff Report with CAMM management
- Submit completed, signed Procurement Approach to PM

Item goes to Committee and Board of Directors

Board of Directors Selects and Awards Contract(s)

- Obtain copy of Board minutes showing Board approval. Include in contract file

Protest Period (Prior to execution of agreement – 7 days)

- If protest is received and procurement if FTA funded, notify FTA of the protest

After Board Award:

- Post award on CAMM NET via Solicitation Manager as soon as Board approves
- Request Cost Proposal (A&E) - Provide recommendation, data, and request for audit report
- Negotiate Agreements –
- Prepare Memorandum of Negotiation and Execute Agreements

- Notify unsuccessful Proposers

Prepare contract

- Include all required federal clauses if federally funded

Notify Consultant

- Certificates of Insurance

Submit Certificates of Insurance to Risk Manager for review & approval

Route for signatures

Issue Notice to Proceed after contract(s) fully executed

Enter contract information in Ellipse and PARSS

Schedule Kick-Off Meeting

Prepared by:

(Contract Administrator)

Date

Reviewed by:

(Supervisor)

Date

IFB Checklist

Upon receipt of requisition:

- Contact PM and request plans, specifications and signed independent cost estimate (ICE)
- Review plans and specifications for completeness; ensure no restrictive requirements. Provide comments to PM

Prepare procurement plan:

- Determine procurement method and contract type. Document justification in procurement plan
- Obtain supervisor's and PM's approval and signature
- Reserve conference rooms (pre-bid meeting, public bid opening)
- Notify DBE Officer, if applicable (Federal)
- Schedule job walk if required
- Schedule Board of Directors approval if \$1,000,000 or greater for IFB release

IFB Preparation:

- Identify terms & conditions; ensure retention and liquidated damages clauses are included
- Include all required federal clauses, if applicable (see federal required clauses list)
- Send specifications to DBE officer to review for UDBE goal if federally funded
- Submit insurance requirements to Risk Manager for approval
- Include contractor safety specifications as required by selected commodity codes, if required
- Submit draft IFB to Section Manager/Department Manager & PM for approval

Submit Public Notice to O.C. Register two days prior to issuance of solicitation

- Submit to Section Manager for approval, prior to submission to O.C. Register
- Once approved, e-mail the OC Register listing advertisement dates (2 dates in 2 consecutive weeks)

Solicitation Package

- Create a PDF of the IFB Solicitation package
- Post IFB Notice on CAMM NET using Solicitation Manager
- Print final IFB and take to Reprographics

Print Bid List (for File) from Solicitation Manager

Prepare:

- Pre-Bid Meeting sign-in sheet
- Pre-Bid Meeting Agenda (handouts)
- Pre-Bid Meeting Notes

Conduct Pre-Bid Meeting and Job Walk- (bring solicitation books and business cards)

Issue Addendum with attendees list, following pre-bid meeting

Issue Addenda for any responses to questions/approved equals

Submit Addenda to Section Manager/Department Manager and PM for approval, prior to posting on CAMM NET

Receive Written Questions due from bidders (OCTA responses to written questions are to be made via Addenda 5 days prior to bid opening date)

Review with PM Approved Equals and Exceptions to specifications/Prevailing Wage Schedule

Conduct Public Bid Opening

Prepare Campaign Contribution Memo and submit to Director

Verify IFB requirements of lowest responsible and responsive bidder are met:

- Verify bid responsiveness- Identified all Addenda; all forms are completed and signed as required.
- Provide subcontractor list to DBE Officer and request approval that UDBE goal has been met if Federal Funds
- Bid Bond – send to Risk Manager for approval (Al Gorski)
- Bid forms – properly completed
- Conduct Reference Checks -Three references and required signatures
- Run Dun & Bradstreet report
<http://www.dnb.com/us/>
- Licensing requirements – Verify general and subcontractors are properly licensed <http://www.cslb.ca.gov/>. Send verification via memo to the PM for concurrence.
- Check that general and subs are not debarred (Federal)
<http://www.epls.gov/eplsearch.do>
- Check Engineers and Surveyors (if appropriate)
http://www.dca.ca.gov/pels/l_lookup.htm
- Check that all federal forms are included if federally funded (Buy America and Lobbying)

Internal Audit (if only one bid received)

- CA determines if firm is a responsive and responsible bidder
- Provide recommendation to determine fair and reasonable price data, and request for audit report under Department Manager's signature
- If price is \$50,000 or below, CAMM will conduct price review to determine fair and reasonableness

Staff Report:

- Provide procurement approach for staff report -
- Review draft staff report with CAMM management
- Prepare Board Agenda Item and calendar two or three weeks prior to committee meeting at which time provide copy to Section Manager and Department Manager

- Copy approval from Board Report
- Submit completed, signed Staff Report to PM

Item goes to Committee/Item goes to Board of Directors

Board Awards Contract

- Obtain copy of Board meeting minutes showing board award of contractor

Protest Period (Prior to execution of agreement – 7 days)

- If protest is received, notify FTA if federally funded

Post award on CAMM NET via Solicitation Manager as soon as Board approves

Notify Contractor

- Intent to award
- Payment and Performance bonds
- Guaranty
- Certificates of Insurance

Notify unsuccessful contractors

Submit Performance Bond, Payment Bond, and Certificates of Insurance to Risk Manager for approval

Prepare contract (ensure all required federal clauses are included if federally funded)

Route contract for signatures

Return Bid Bonds to unsuccessful contractors

Issue Notice to Proceed after contract is fully executed

Enter contract information in Ellipse and PARSS

Schedule Kick-Off Meeting

Prepared by:

(Contract Administrator)

Date

Reviewed by:

(Supervisor)

Date

AGREEMENT BREAKDOWN SHEET

FUNDING SOURCE:

Local

Federal

Measure M1 M2

Vendor #: _____	
Folder: _____	
Ellipse Entry Date:	
Original: _____	
A-1 _____	A-2 _____
A-3 _____	A-4 _____
A-5 _____	A-6 _____
Insurance: _____	
Unique Terms: _____	
PA Sign-off: _____	
Section Manager Sign Off: _____	

CTO Contract: _____
Other Contracts Awarded Under RFP:

CTO Award: _____
Rotational or Competed
If Rotational, Please List In What Order:

LEFT HAND SIDE-INSIDE COVER	_____
• Vendor Profile (Camm Net)/Ellipse Print Out	
NOTICE TO PROCEED	1
• Notice of Completion	
PRELIMINARY NOTICES	2
• Preliminary/Stop Notices Log	
• Preliminary/Stop Notices (Construction)	
AGREEMENT AND/OR P.O. EXHIBIT	3
• Agreement including all Attachments	
• Amendments or Change Orders / Back-Up Documentation (ICE)	
CTO's	4
• CTO ACCESS Database Print Out	
• CTO Document & Back-Up Documentation (ICE)	
STAFF REPORT	5
• Final copy from Board Book & BOD Agenda Setting Package	
• Copy of Approved BOD minutes showing BOD action on procurement	
PARTY DISCLOSURE FORMS	6
• Prime and Subcontractor Listing Form	
• Campaign Contribution Information	
• Campaign Contribution Correspondence To and From	
REQUISITION	7
• Agreement ICE	
• ISPI Form	
• Grant Approval	
CORRESPONDENCE	8
INSURANCE/CERTIFICATES	9
• Insurance Certificates/ Endorsements	
• Memos to/from Risk Management	
• Insurance Verification Form	
BONDS/IRREVOCABLE LETTERS OF CREDIT	10
• Performance/Payment Bonds, Guarantees (Originals)	
• Letter of Credit/Escrow Agreements (If applicable)	
LEGAL AD AND NOTICE	11
• Verification Publication	
ORIGINAL IFB/RFP & ADDENDUMS	12
SOLE SOURCE FORM	13
BID LIST	14
• All Bid Lists (Including Addenda)	
• Pre-Bid/Pre-Proposal Registration	
• Public Bid Opening Sign-in Sheet	
BAFO/AUDIT INFO.	15
• Record Negotiations & Negotiation Memorandum	
• Audit Reports	
PROPOSALS/NO BIDS	16
• RFP/IFB Record Log	
• Original Winning Proposal	
• Bid Opening Sign-in Sheet	
VENDOR PERFORMANCE FORM	17
EVALUATION FORMS	18
• Procurement Plan/Schedule	
• Evaluation Committee Package-including Score Sheets	
• Source Selection Plan	
• Cost & Price Information	
• Dun & Bradstreet Reports	
• Reference Checks	
• License Checks (Construction/A&E)	
• Certifications	
EVALUATION NOTES	19
DBE EVALUATION INFO	20
• Evaluation Memos/Letters	
• DBE Related Correspondence	
NOTES/MISCELLANEOUS	21
• Draft Documents (RFB/IFB)	
• Pre-Proposal Notes/Agenda	
• Kick-off Meeting Notes	



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

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

JUL 07 2010

Mr. Will Kempton
Chief Executive Officer
Orange County Transportation Authority
550 South Main Street
Orange, CA 92863

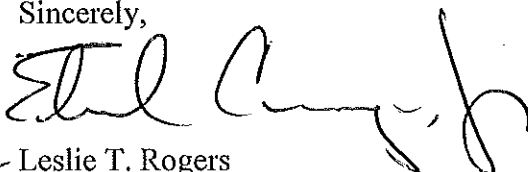
Re: Final Report of the Procurement Systems Review
of June 2010

Dear Mr. Kempton:

Based upon your agency's follow on submittal to us dated June 28, 2010 all remaining deficiencies have been satisfactorily answered and are considered closed.

We appreciate the cooperation and assistance provided by the OCTA staff during the course of this review. If you have questions, please contact Jeffrey Davis, at (415) 744-2594 or email him at Jeffrey.S.Davis@Dot.Gov

Sincerely,


for Leslie T. Rogers
Regional Administrator