

# **RIVERSIDE COUNTY TRANSPORTATION COMMISSION**

## **EXECUTIVE COMMITTEE**

(COMMISSIONERS STEVE ADAMS, MARION ASHLEY, BOB BUSTER,  
TERRY HENDERSON, BOB MAGEE, JEFF STONE,  
JOHN TAVAGLIONE, MICHAEL WILSON, ROY WILSON)

**9:30 A.M.**

**WEDNESDAY, APRIL 11, 2007**

County of Riverside Administrative Center  
Conference Room A  
4080 Lemon Street, 3<sup>rd</sup> Floor, Riverside

*In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if you need special assistance to participate in an Executive Committee meeting, please contact the Clerk of the Board at (951) 787-7141. Notification of at least 48 hours prior to meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility at the meeting.*

- 1. CALL TO ORDER**
- 2. PUBLIC COMMENTS**
- 3. APPROVAL OF MINUTES – FEBRUARY 14, 2007**
- 4. ADDITIONS/REVISIONS** *(The Committee may add an item to the Agenda after making a finding that there is a need to take immediate action on the item and that the item came to the attention of the Committee subsequent to the posting of the agenda. An action adding an item to the agenda requires 2/3 vote of the Committee. If there are less than 2/3 of the Committee members present, adding an item to the agenda requires a unanimous vote. Added items will be placed for discussion at the end of the agenda.)*

**5. MEMORANDUM OF UNDERSTANDING NO. 07-19-119-00 WITH THE COUNTY OF RIVERSIDE FOR THE PROVISION OF CARPOOL SERVICES TO COMMISSION EMPLOYEES**

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***Overview***

This item is for the Committee to:

- 1) Adopt a policy wherein Commission employees would become eligible to formally participate in the County of Riverside (County) Carpool Program; and,
- 2) Authorize the Executive Director, pursuant to legal counsel review, to enter into Memorandum of Understanding (MOU) No. 07-19-119-00 with the County for the provision of these services.

**6. PROCUREMENT POLICIES MANUAL**

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***Overview***

This item is for the Committee to adopt the Procurement Policies Manual as a new set of policy guidelines for the procurement and contracting activities of the Commission.

**7. ADJOURNMENT**

# **AGENDA ITEM 3**

## **MINUTES**

# ***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

## **EXECUTIVE COMMITTEE**

**February 14, 2007**

### **Minutes**

#### **1. CALL TO ORDER**

Chair Terry Henderson called the meeting to order at 9:00 a.m., on Wednesday, February 14, 2007, at the Riverside County Transportation Commission's Conference Room A, 4080 Lemon Street, Third Floor, Riverside, California 92501.

#### **Commissioners Present**

Steve Adams  
Marion Ashley  
Bob Buster  
Barbara Hanna  
Terry Henderson  
Bob Magee  
Jeff Stone  
Michael Wilson  
Roy Wilson

#### **Commissioners Absent**

John Tavaglione

#### **2. PUBLIC COMMENTS**

There were no requests to speak from the public.

#### **3. APPROVAL OF MINUTES**

**M/S/C to approve the minutes of January 10, 2007 as submitted.**

#### **4. ADDITIONS/REVISIONS**

There were no additions or revisions to the agenda.

## **5. TRAVEL AND EXPENSE POLICY REVISIONS**

Theresa Trevino, Chief Financial Officer, presented the revisions to the Employee Travel and Expense Reimbursement Policy and the Riverside County Transportation Commission Legislative Body Reimbursement Policy. She stated that these policies are conservative and have sufficient controls to protect the use of Measure A funds and withstand public scrutiny.

At the Committee's request, Theresa Trevino provided clarification on per diems and receipt requirements.

**M/S/C (Ashley/M. Wilson) to**

- 1) Approve the revisions to the Employee Travel and Expense Reimbursement Policy;**
- 2) Adopt Resolution No. 07-002, *"A Resolution of the Riverside County Transportation Commission Regarding the Revisions to the Employee Travel and Expense Reimbursement Policy"*;**
- 3) Approve the revisions to the Riverside County Transportation Commission Legislative Body Reimbursement Policy; and**
- 4) Adopt Resolution No. 07-003, *"A Resolution of the Riverside County Transportation Commission Regarding the Revisions to the Riverside County Transportation Commission Legislative Body Reimbursement Policy."***

## **6. WESTERN RIVERSIDE COUNTY 10-YEAR DELIVERY PLAN ORGANIZATION IMPACTS**

Eric Haley, Executive Director, discussed the impacts of the implementation of the delivery plan on Commission staffing.

Commissioner Bob Buster expressed concern regarding the one percent limit of Measure A sales tax revenue for administrative salaries and benefits as it relates to the current role of Caltrans and the Commission's increasing role as a capital delivery agency.

Anne Mayer, Deputy Executive Director, responded that this has been an increasing issue for self-help counties as the environment is moving from high-level oversight to project delivery. She then discussed the use of consultant support and presented the management team position recommendations.

Theresa Trevino provided clarification on the one percent limit.

Commissioners Marion Ashley and Buster expressed support for the staff recommendation.

Commissioner Bob Magee expressed support for the staff recommendation and the concept of phasing staff in. He also urged caution in growing government.

**M/S/C (Stone/Buster) to:**

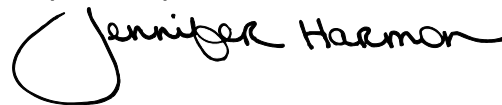
- 1) **Establish an Administrative Support Specialist position on Range 3, (\$3,055-\$4,124 per month). This position will provide administrative support to all departments and programs;**
- 2) **Establish a Senior Staff Analyst position in the Programming Department on Range 7, (\$5,589-\$7,545 per month). This position will assume additional programming responsibilities related to delivery plan and Proposition 1B funding;**
- 3) **Establish two Staff Analyst positions in the Right-of-Way Department on Range 6 (\$4,860 - \$6,561 per month). These positions will assume additional project right-of-way responsibilities;**
- 4) **Establish an Accounting Supervisor classification and position at or below Range 7, (\$5,589 -\$7,545 per month). This position will have general professional accounting responsibilities and supervise accounting support personnel;**
- 5) **Establish a Community Relations Program Manager position on Range 8 (\$6,847-\$9,243 per month), in the Public Affairs Department. This position will have community relations responsibilities for delivery plan priority projects;**
- 6) **Establish a Goods Movement Program Manager position on Range 8, (\$6,847-\$9,243 per month), in the Regional Programs Department. This position will be responsible for management of goods movement issues and projects including the Multi-County Goods Movement Action Plan, Colton Crossing and grade separation strategy coordination;**
- 7) **Establish a Capital Projects Program Manager position on Range 8, (\$6,847-\$9,243 per month). This position will be responsible for non-toll Delivery Plan Project Management;**

- 8) **Divide Project Delivery Director responsibilities into Project Development and Project Delivery Director positions. Establish a Director position on Range 11 (\$9,311-\$12,570 per month). Together, these positions will be responsible for all aspects of capital projects delivery;**
- 9) **Establish a Toll Program Director position, salary negotiable, as a limited term Contract Employee. This position will be responsible for management of the toll program coordination and development;**
- 10) **Establish two Toll Project Manager positions, salary negotiable, as limited term Contract Employees. These positions will be responsible for SR-91 and I-15 project management;**
- 11) **Modify the pay structure to incorporate the new Accounting Supervisor;**
- 12) **Approve the revised organizational chart to reflect the proposed changes; and**
- 13) **Approve a budget adjustment of \$324,800 for salaries and benefits to support the proposed positions.**

## **7. ADJOURNMENT**

There being no other items to be considered, the Executive Committee meeting adjourned at 9:52 a.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Jennifer Harmon". The signature is written in a cursive style with a large, looped initial "J".

Jennifer Harmon  
Clerk of the Board

# **AGENDA ITEM 5**



***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

<b>DATE:</b>	April 11, 2007
<b>TO:</b>	Executive Committee
<b>FROM:</b>	Robert Yates, Program Manager Michele Cisneros, Accounting and Human Resources Manager
<b>THROUGH:</b>	Eric Haley, Executive Director
<b>SUBJECT:</b>	Memorandum of Understanding No. 07-19-119-00 with the County of Riverside for the Provision of Carpool Services to Commission Employees

**STAFF RECOMMENDATION:**

This item is for the Committee to:

- 1) Adopt a policy wherein Commission employees would become eligible to formally participate in the County of Riverside (County) Carpool Program; and,
- 2) Authorize the Executive Director, pursuant to legal counsel review, to enter into Memorandum of Understanding (MOU) No. 07-19-119-00 with the County for the provision of these services.

**BACKGROUND INFORMATION:**

The County has a long standing rideshare program utilizing County vehicles for carpooling purposes for regular full-time County employees. Through an informal agreement, employees of the Commission have been also allowed to participate in this program although the Commission employees have not been allowed to drive. This exclusion was due to insurance and risk management reasons as determined by the County.

Additionally, all users of the program were subject to the County's participant policy, which sets the terms and guidelines for using the program. A participant is also required to sign the policy, and these terms also applied to Commission employees even though no formal relationship existed between the Commission and the County. Lastly, the Commission has reimbursed the County at a rate of \$65/month for each Commission employee utilizing the program.

**DISCUSSION:**

On March 27, 2007, the County Board of Supervisors formally changed its policy to reflect the Commission's (as well as any other public entity's) ability to formally participate in the County's carpool program. This change will allow participants of entities having a formal agreement (MOU) with the County to drive the County's carpool vehicles. The County's policy change requires the Commission to provide insurance coverage of County vehicles participating in the carpool program. Staff has verified with the Commission's insurance carrier that coverage includes non-owned automobile insurance of \$1 million and an umbrella policy of \$10 million at no additional cost to the Commission. This change will increase program flexibility for all participants involved by increasing the amount of available drivers. Increased flexibility makes carpooling more attractive to users, which assists the Commission in its mobility enhancing programs.

Attachment: Draft MOU with the County of Riverside

**MEMORANDAM OF UNDERSTANDING (MOU)**  
**BETWEEN**  
**THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION (RCTC)**  
**AND**  
**THE COUNTY OF RIVERSIDE**

**BACKGROUND**

WHEREAS the County of Riverside, a political subdivision of the State of California, (herein referred to as "County") operates a Vehicle Program to allow County employees and other participants (all of which are referred to herein as Participants) a method of commuting to and from work that is more fuel efficient, reduces total vehicle emissions and cuts commuting costs.

WHEREAS the Riverside County Transportation Commission (RCTC), doing business on the premises of the County Administrative Center 4080 Lemon Street, in the City of Riverside, desires to have their employees participate in the County's Vehicle Program.

WHEREAS the County and RCTC agree that RCTC's participation in the County Vehicle Program will increase energy conservation and reduce pollution in Riverside County.

THEREFORE the County and RCTC agree, subject to the provisions contained herein, to allow RCTC employees to participate in the County Vehicle Program.

**TERMS AND CONDITIONS**

1. Term of MOU

This MOU shall begin on March 27, 2007, and continue until cancelled in writing by either party.

2. Duties of RCTC

A. RCTC may offer its employees the opportunity to participate in the County Vehicle Program. RCTC agrees to require, as a condition of their employee's participation, that its employees will conform to all participation requirements set forth by the County's Vehicle Program. Those RCTC employee's participating in the program shall be referred to herein as "RCTC participants."

- B. RCTC is responsible for the timely payment of all participation fees and other costs assessed for the participation of each RCTC participant by the County Vehicle Program. RCTC shall provide such payment of all moneys due no later than once per month.
- C. The County's Vehicle Program requires each employee driver be part of the 'California Department of Motor Vehicles Information Services Branch, Government Employer Pull Notice Program' (Pull Notice Program). This program allows the County to be notified if a RCTC participant who is a driver in the program loses his or her driver's license for any reason. RCTC agrees that if the County is unable to include RCTC participant drivers in the County's Pull Notice Program that RCTC will take reasonable steps to institute its own Pull Notice Program and provide the County's Rideshare Office with all information received concerning RCTC driver Participants. In the event that RCTC does not institute its own Pull Notice Program within 60 days, RCTC's participants shall not be permitted to be drivers in the program..
- D. RCTC agrees to authorize and instruct RCTC participant who are drivers in the program to attend the County's Drivers Training during working hours and RCTC agrees to pay the standard County fees for such training. RCTC participant who are drivers in the program will participate in the training programs prior to participating in the County Vehicle Program.
- E. RCTC participant shall be covered, where applicable under law, by RCTC's Workers' Compensation coverage and RCTC agrees, as respects claims arising from this MOU, to endorse their Workers' Compensation policy to waive subrogation in favor of The County of Riverside, and, to provide the County a Borrowed Servant/Alternate Employer Endorsement.
- F. RCTC agrees to purchase automobile liability insurance in the amount of \$5 Million to cover liability for the acts or omissions of RCTC participants while driving under the program. The County shall be named as an additional insured on such insurance policy. RCTC shall, only to the extent proceeds are available from of such insurance policy, indemnify and hold harmless the County for claims arising out acts of omissions of RCTC participant while driving under the program..
- G. RCTC understands and agrees that the County may elect to terminate any individual's participation in the program, if in the opinion of the County Vehicle Program administrator the individual's behavior is unacceptable or unsafe. The County shall promptly provide writing notice of such termination to RCTC and the affected RCTC participant

### 3. Duties of the County

- A. The County agrees to allow RCTC employees to participate in the County's Vehicle Program. Such participation will provide all the benefits and duties to RCTC employees as are provided for, and required of, County employees, EXCEPT THAT the County Vehicle Program will not provide those benefits to RCTC employees that are provided under the RCTC Rideshare program such as: Guaranteed Ride Home, free parking pass, and other participation incentive programs.
- B. The County's Human Resources Department Rideshare Division shall coordinate with the appropriate RCTC staff to inform RCTC employees of their eligibility and the requirements for participation in the program including costs and other conditions.
- C. The County's Vehicle Program administrator will coordinate any required County drivers training classes for RCTC driver Participants.
- D. The County agrees to indemnify and hold harmless RCTC for claims arising out of the operation of the County Vehicle Program; however such indemnification shall not apply to claims arising from the actions of an RCTC Participant as described in 2. F. above.

### 4. Alteration of Terms

No addition to, or alteration of, the terms of this MOU, whether by written or verbal understanding of the parties, their officers, agents or employees, shall be valid unless made in the form of a written amendment to this MOU which is formally approved and executed by all parties.

### 5. Assignment or Extension of Benefits

The rights of participation in the County Vehicle Program are meant for the exclusive use of RCTC employees and may not be extended by RCTC to employees of any other organization.

### 6. Confidentiality

All personal information about RCTC employees received by the County (such as DMV reports) will be treated by the County with the same standards for confidentiality as we would treat County employee data.

7. Contacts

All official correspondence related to this MOU shall be sent to the following:

**County:**

County of Riverside  
Human Resources Dept.  
4080 Lemon Street, 7th Floor  
Riverside, CA 92501

**RCTC:**

Riverside County Transportation Commission  
RCTC Executive Office  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501

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

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

By: \_\_\_\_\_

By: \_\_\_\_\_

*Approve as to Form:*

\_\_\_\_\_  
*County Counsel*

RV PUB\SDEBAUN\729428.2

# **AGENDA ITEM 6**

***RIVERSIDE COUNTY TRANSPORTATION COMMISSION***

<b>DATE:</b>	April 11, 2007
<b>TO:</b>	Executive Committee
<b>FROM:</b>	Sheldon Peterson, Program Manager Stephanie Wiggins, Regional Programs Director
<b>THROUGH:</b>	Eric Haley, Executive Director
<b>SUBJECT:</b>	Procurement Policies Manual

**STAFF RECOMMENDATION:**

This item is for the Committee to adopt the Procurement Policies Manual as a new set of policy guidelines for the procurement and contracting activities of the Commission.

**BACKGROUND INFORMATION:**

The Commission has been in the process of reviewing and updating several of the key internal policies and procedures by which it operates. Some of the processes identified for review and update were the contracting and procurement procedures. The previous procurement policies were abbreviated and not comprehensive enough for the expanding role of the Commission.

This deficiency was further demonstrated during the Federal Transit Administration (FTA) FY 2006 Triennial Review in August 2006. This review is completed every three years to evaluate the agency's policies and practices to ensure compliance with the federal guidelines for receiving FTA funds. The Commuter Rail Department is the recipient of FTA 5307 Urbanized Area formula funds that are used for capital improvements to build stations, expand parking lots, and to develop new rail corridors such as the Perris Valley Line (PVL). During this review, FTA staff identified that the Commission needed to develop a more formal written procurement policies and procedures manual that conforms to applicable state and federal laws including 49 CFR Part 18. The Commission hired Altmayer Consulting Inc. to assist staff in developing an updated Procurement Policies Manual that met the FTA's requirements. The consultant conducted a review of federal and state regulations and analysis of other agencies procedures such as OCTA and SCRRA. Then after several meetings with staff, the consultant developed an updated Procurement Policies Manual. This manual was forwarded to the FTA and was accepted as a corrective action for the triennial review. The FTA also made some additional suggestions that were incorporated in the revised document. Staff is now requesting adoption of the Procurement Policies Manual.



## **Procurement Policies Manual Highlights**

The new Procurement Policies Manual outlines a more comprehensive program that incorporates the key elements needed to comply with FTA regulations, yet still tries to be user friendly for staff and meet the changing needs of the Commission. The new manual does the following:

- Identifies the Chief Financial Officer and his or her designee as the purchasing agent;
- Creates a written standard of conduct for employees and Commission members to use ethical purchasing practices;
- Increases the Supplies, Services or Contracts range from \$25,000 to \$50,000 to be eligible to use the limited solicitation process;
- Provides a detailed competitive procurement process that identifies the request for proposal procedures;
- Clearly defines the use of sole source for federally funded projects;
- Outlines the written evaluation and proposal review standards and provides specific procedures for construction contracts;
- Formalizes a protest procedure that identifies acceptable grounds for protest and creates criteria for protest submittals;
- Describes the contract policies and incorporation of federal provisions as required by FTA; and
- Provides a quick reference guide for staff.

The new Procurement Policies Manual provides the Commission with a formal set of procedures that will assist all aspects of the organization. With the increasing number of projects using federal funding sources, the manual provides a framework to ensure compliance with state and federal regulations.

Attachment: Procurement Policies Manual

# **PROCUREMENT POLICIES MANUAL**

*Revised: April 4, 2007*



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## **GENERAL PROCUREMENT POLICIES**

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### **PURPOSE**

The purpose of the manual is to outline policies in order to provide safeguards for maintaining a procurement system of quality and integrity as well as to maximize the purchasing value of Riverside County Transportation Commission (“RCTC”) funds.

### **PURCHASING AGENT FOR SUPPLIES AND SERVICES**

The Chief Financial Officer and his or her designee is identified as the “purchasing agent” for RCTC. The Purchasing Agent shall be responsible for the purchase of all supplies, services and contracts up to \$50,000, except relating to real property, whether lease, sale or otherwise, to ensure the uninterrupted operation of RCTC. The Purchasing Agent shall act in accordance with RCTC approved policies.

All purchases must be initiated by using the appropriate contract or purchase order documentation and should be processed as expeditiously as possible.

#### *DEFINITION OF TERMS*

*Supplies:* In general, tangible or movable items (other than money), such as equipment, materials, and other goods, including consumables.

*Services:* In general, intellectual or manual efforts of individuals or firms. These services, include, but are not limited to, engineering design, construction management, graphic design, maintenance services and repair services.

*Real Property:* Land or, in general, whatever is erected (or growing) upon or affixed to land.

### **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

In order to ensure RCTC’s compliance with the federal Disadvantaged Business Enterprise (“DBE”) Program on all applicable procurements subject to a funding grant awarded by the federal Department of Transportation (“USDOT”), RCTC will utilize disadvantaged business enterprises in compliance with 49CFR Part 26 to the extent practicable in procurement activities funded in whole or in part by the USDOT.

### **WRITTEN STANDARDS OF CONDUCT**

No employee, officer, agent, immediate family member, or Commission member of RCTC shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Commission member,

- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

RCTC's officers, employees, agents, or Commission members will comply with state and federal law regarding acceptance gifts, gratuities, or favors from contractors, potential contractors, or parties to sub agreements.

### **LOBBYING AND GIFTS**

All procurements shall be conducted in accordance with RCTC's Ethics Policy governing lobbying and gifts.

### **PROCUREMENT FILES**

All documents associated with any procurement action, including but not limited to purchases of supplies, services, contracts, solicitation documents (Invitation for Bids, Notice Requesting Bids, Request for Proposals, etc.), bids or proposal, evaluation reports, meeting or negotiation notes, insurance certifications, correspondence, notices, purchase order and contract agreements should be retained in a procurement file. Once all requirements and obligations relating to the procurement have been satisfactorily completed, claims, if any, have been resolved, and final payment made, the file should be closed.

## **PROCUREMENT PROCEDURES**

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### **REQUISITIONS**

All procurement actions that will result in binding RCTC, whether competitive or non-competitive, to a contract or purchase order, require a Requisition be submitted prior to the initiation of the procurement process regardless of dollar value. The Requisition provides a record that the requirement was budgeted and properly approved before the procurement process began.

This policy shall apply to all procurements except those necessitated by an emergency (See, Emergency Procurement) or for the purchase and lease of real property.

### **SERVICES AND SUPPLIES (UP TO \$50,000)**

Purchases of supplies and services as well as contracts up to \$50,000 do not require a formal bid process. Instead, the procedure outlined below may be used.

Funding for supplies and/or services must be included within the fiscal year budget. To solicit project or program proposals, the project or program must have budgetary approval. If not, action to proceed with the proposal shall be presented to the Commission for approval.

#### **Supplies, Services or Contracts Up to \$2,500:**

The Purchasing Agent may procure supplies, services or contracts up to \$2,500 or less using a purchase technique that best serves the needs of RCTC. The invoice, purchase order, bill, receipt or other written record of the purchase of the supply, service, or contract should be documented in a procurement file.

#### **Supplies, Services or Contract between \$2,500 to \$50,000:**

The Purchasing Agent may procure supplies, services or contracts between \$2,500 to \$50,000 using a limited solicitation procedure. This procedure requires a minimum of three (3) viable written or oral responses, if available. A smaller number of responses shall be acceptable where, in good faith, the Purchasing Agent determines that obtaining additional responses is not feasible and will not lead to a more competitive procurement. The process for limited solicitation to procure supplies, services, and contracts shall be documented in a procurement file and include the name(s) of the vendor(s) or firm(s), address and telephone number, as well as the written or oral quotation(s) received from each vendor or firm.

Purchases of all supplies, services, equipment, materials, and the construction of facilities, over \$50,000 require a formal bid process. (See, Competitive Procurement)

## COMPETITIVE PROCUREMENT

A competitive procurement method should be used as required by law. In addition, such a method should be used as a matter of policy unless non-competitive procurement is in the best interests of RCTC. This policy applies to all procurement of supplies, services and contracts over \$50,000, except those necessitated by an emergency (See, Emergency Procurement).

### 1. Request for Proposal or Request for Qualification

A Request for Proposal (“RFP”) or a Request for Qualifications (“RFQ”) are generally used for service contracts. RFPs and RFQs have a stated deadline and solicit for specific needs.

Awards shall be made to the responsible proposer whose proposal is the most advantageous to RCTC. Such offers shall be evaluated in accordance with the Review and Evaluation section of this Manual.

#### *Contents of an RFP or RFQ*

The following are some of the suggested elements of what an RFP or RFQ shall include:

- a. Transmittal Letter
- b. Project Title Page: The title page shall include the following information:
  - Identification of the program and/or identifying number
  - Name and address of RCTC and the Staff member overseeing the program
  - Proposed start date and end date
  - Date proposals are due
- c. Abstract
 

The abstract is a condensed version of the proposal, written in non-technical language, usually less than 250 words. It should concisely state the significance of the project, what will be accomplished, how it will be accomplished, and the proposed period of performance.
- d. Introduction or Background
 

RFPs and RFQs generally provide for a background of RCTC and the services it provides. In developing this, it is suggested that Staff request information from Public Affairs or obtain information from RCTC’s latest marketing brochure.
- e. Technical Description
 

An important element of the proposal is defining the objectives and scope of the project. Consider the amount of requested support and define the objectives and scope accordingly. If the scope and objectives are defined too broadly, it may not be possible to complete the project at the awarded level of funding. If the scope and objectives are defined too narrowly, the project may run out of scope.
- f. Budget

The proposed budget is Staff's best estimate needed to perform the technical goals and activities of the proposed project and therefore careful front-end preparation is important. Staff must use vendor price quotes or some reasonable cost basis as support for budgeted items. It is advisable that unallowable costs and/or budget inflation factors be noted in the proposal. Underestimated budgets for projects are one of the primary causes of cost overruns and, if this occurs, it is the responsibility of the department director.

g. **Criteria for Review**

The RFP or RFQ should set forth the criteria that RCTC will use to review the proposal. If the service or construction proposal is funded by federal funds, Staff must note RCTC's annual Disadvantaged Business Enterprise goal for the fiscal year.

## **2. Invitation for Bid/Notice Requesting Bids**

An Invitation for Bid ("IFB") or Notice Requesting Bids ("NRB") are used when RCTC knows what supplies or services it wishes to purchase. IFBs and NRBs are generally used for construction projects and for purchase of supplies. It shall include technical specifications, bid closing date and time of the award. Contracts, in most cases, are awarded to the lowest priced responsive and responsible bidder.

### **SOLE SOURCE PROCUREMENTS FOR FEDERALLY FUNDED PROJECTS**

A sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. This documentation is normally furnished by the originating department and verified by the Purchasing Agent, who is responsible for making the final determination on sole source procurements. A contract amendment or change order that is not within the scope of the original contract shall be considered a sole source procurement.

Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

1. The item is available only from a single source;
2. The public exigency or emergency (i.e., a threat to public health, welfare, safety, property or other substantial loss to FST, or a situation requiring immediate action by FST, as determined by FST) for the requirement will not permit a delay resulting from competitive solicitation.
3. FTA authorizes noncompetitive negotiations;



4. After solicitation of a number of sources, competition is determined inadequate;  
or
5. The item is an associated capital maintenance item as defined in 49 U.S.C. § 5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (I) that such manufacturer or supplier is the only source for such item; and (ii) that the price of such item is not higher than the price for such item by like customers.

A cost analysis, i.e., verifying the proposed cost data, the projection of the data, and the evaluation of the specific elements of costs and profit, is required. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery, and terms.

### **EMERGENCY PROCUREMENT**

This policy applies in the case of an emergency that means a public calamity, such as a fire, flood, storm, epidemic, or other disaster or interruption of contracts essential to the provision of daily service or the catastrophic failure of revenue producing equipment or facilities. When such an emergency occurs, RCTC may enter into contracts without observance of competitive bids, advertisement or notice. RCTC authorized Staff shall take those steps necessary to implement immediate remedial measures to avert or alleviate damage to property, or to replace, repair or restore property or to maintain or restore services. Staff will report to the Commission during the next regularly scheduled Commission meeting of any actions taken pursuant to this provision.

### **COOPERATIVE PROCUREMENT**

The principal purpose of a cooperative agreement and memorandum of understanding is to accomplish a public purpose. A cooperative agreement or memorandum of understanding is used if substantial involvement is expected between RCTC and another agency when carrying out the activity contemplated in the agreement that is a binding contract.

### **BID SECURITY AND BOND REQUIREMENT**

Bid security must be included with the sealed bid on all public works procurements. Bid security may be required for other procurements.

All public works contracts will require performance and payment (material and labor) bonds as a condition of receiving a Notice to Proceed. Contracts, other than public works, may require a performance and/or payment bonds.

Prospective bidders/proposers shall be notified of the bid security requirement and the amount, as well as any other security or bonds that may also be required in the solicitation documents.

**PIGGYBACKING**

Piggybacking is an assignment of existing contract rights to purchase supplies, equipment, or services. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award such a contract, then there must be a total minimum and maximum.

## **EVALUATION AND AWARD POLICIES**

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### **WRITTEN PROCUREMENT SELECTION PROCEDURES**

All competitive solicitations shall:

- | Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- | Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. 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 procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
- | Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

### **BID/PROPOSAL REVIEW AND EVALUATION**

This policy provides the guidelines for reviewing bids and proposals received in response to an Invitation for Bids (“IFB”), Notice Requesting Bids (“NRB”), Request for Proposal (“RFP”) or Request for Qualifications (“RFQ”) (collectively referred to as “Competitive Procurements”). (See, Competitive Procurement).

#### ***Project or Program Proposals***

1. Upon Commission approval, all Competitive Procurements are prepared and advertised in newspapers of general circulation and/or through the RCTC website. Competitive Procurements may also be directly mailed to a list of consultants. This list is kept current and includes all interested and potentially qualified consultants. This list includes Disadvantaged Business Enterprise consultants and is applicable for projects that include federal funds.
2. Consultants for professional services or architectural and engineering services are given a specified time to submit proposals usually seven (7) days or

longer. An RFP or RFQ requires that the responding consultant submit copies of their qualifications and proposed scope of work, schedule and budget. The RFP provides consultants two (2) to four (4) weeks to respond to the proposal. The proposals are reviewed and evaluated by appropriate RCTC Staff and project management consultant. In general, a select group of proposers are “short-listed” and given notice to prepare and make a presentation before an interview panel.

3. Depending on the proposal, the interview panel may consist of RCTC Staff, Caltrans representative, local agency representative (city or county) and/or private entity, if the proposal involves a Cooperative Agreement requiring such participation. Commissioners may also be included at the direction of the Chair of the Commission.
4. The interview panel ranks the “short-listed” firms and negotiations begin with the top ranked firm(s) concerning the proposed project budget. If negotiations between RCTC and the top ranked firm are unsuccessful, then the next ranked firm will be invited to begin negotiations. This process will be continued until a project budget can be agreed upon.
5. Upon agreement of the cost for services, RCTC Staff will present the proposal to the Commission for approval to award the contract. After Commission approval and award, a Notice to Proceed shall be issued.

### ***Construction Contracts***

1. RCTC completes final Plans, Specifications and Estimates (“PS&E”) and obtains all necessary permits and approvals for construction to begin. Contract documents (bid package) are prepared for distribution to bidders desiring the information.
2. A Notice Requesting Bids (“NRB”) is published in newspapers of general circulation and on RCTC’s website. The NRB is also mailed to firms on RCTC’s list, including Disadvantaged Business Enterprise firms. Usually, a fee to cover printing costs for the contract bid documents is charged. Bidders are provided information on the schedule of key dates for submitting their bids.
3. A pre-bid meeting is held approximately one (1) week prior to receipt of the sealed bids. This pre-bid meeting is to provide prospective bidders an opportunity to ask pertinent questions regarding the proposed contract and award process. Prospective bidders are informed that they must pay state prevailing wages and have a contractor’s license of sufficient class to accomplish all project work at the time of the award.
4. After the pre-bid meeting, sealed bids received by RCTC are typically opened within one (1) hour after receipt in the presence of all bidders. The contract is awarded to the lowest priced responsive and responsible bidder. The bids are reviewed and checked to verify that the successful bidder has included all of the required information, bonds, and insurance. If the lowest bid is found not to meet RCTC’s contract requirements and found to be non-responsive, RCTC will continue with the next lowest responsible bidder until a responsive bid is

found that adequately meets all of the contract requirements. The successful bid will then be presented by RCTC Staff to the Commission for final award and approval. After the Commission's approval of the award, a Notice to Proceed is issued to the successful bidder.

### ***DEFINITION OF TERMS***

*Determination of Responsibility:* The term "responsible" refers to a bidder's financial resources, judgment, skill, experience, integrity and business ethics, as well as ability to successfully fulfill the requirements of the contract. RCTC will not award a contract to any bidder determined to be non-responsible. Information not contained in the bid may be requested from the bidder for evaluation purposes. Information from outside sources (e.g. Dun & Bradstreet) may also be used.

*Determination of Responsiveness:* To be responsive and to be considered for award, a bid must comply both as to method and timeliness of submittal and to the substance of the resulting contract. The responsiveness of the bid itself is determined by its conformance to the technical, legal and commercial requirements of the bid documents. Generally, a bid is not responsive and may be eliminated from consideration for award on that basis if the bidder deviates from the bid requirements, fails to follow the procedures for submittal, does not include the required bid form properly completed and signed. A bid may be rejected when the bidder imposes conditions that would modify requirements of the solicitation documents. RCTC may waive minor, non-material errors or omissions, which do not allow a competitive edge.

### **TECHNICAL AND COST CRITERIA WEIGHTS**

Appropriate technical and cost criteria weights should be adopted for use when a negotiated competitive procurement process is utilized.

- 1 All negotiated competitive procurements shall include technical and cost components. The technical and cost components shall be further broken down into evaluation criteria and sub-criteria appropriate to the scope of the work. Weights shall be assigned to each criteria and sub-criteria. These weights shall be included in the solicitation package. The evaluation criteria weights shall reflect the scope of work and intended purpose of the resulting contract. In addition, the solicitation package will also include the minimum technical score that must be achieved for the firm to be short-listed for further consideration.
- 1 If interviews are planned, the interview must be identified as a weighted evaluation criterion with weighted sub-criteria, and included in the solicitation package. In addition, the minimum technical score required to move to the interview phase of the evaluation process must be included in the solicitation package.
- 1 There may be instances when, due to the necessity to expedite the procurement process or changes to the Commission meeting schedule(s), it will be necessary to take the weighted technical and cost criteria and sub-criteria directly to the Commission for approval. In such cases, it will be the

responsibility of Staff to obtain approval from the Executive Director to go directly to the Commission. Staff shall include in the Commission agenda item an explanation of why the criteria and sub-criteria were not approved before presentation to the Commission.

### **TIE BIDS**

This policy establishes a method to address tie bids.

In response to an Invitation for Bid (“IFB”) or Notice Requesting Bids (“NRB”), the lowest two (2) or more responsible and responsive bids are tied, the following steps should be taken:

- | Confirm that the bids are identical and responsive to the requirements and terms and conditions of the IFB or NRB.
- | If the bids are tied, establish a date and time to draw lots to determine the winner.
- | Advise the tied bidders in writing that a tie has occurred, advise them a winner will be determined by drawing lots, and invite them to attend.
- | Conduct the drawing of lots on the date and time previously established.
- | The drawing of the lots is to be witnessed by at least two (2) individuals. The procurement file should reflect the names, titles, and departments of the witnesses. If the witnesses are not RCTC employees, the name, company, address, and telephone number of the individuals should be listed.

### **BID OR PROPOSAL REJECTION**

RCTC reserves the right to reject any and all bids or proposals, or to waive any informality or non-substantive defects in bids or proposals, if RCTC determines, at its sole discretion, that it is in the best interest of RCTC to do so. Any and all submission occurring after the time and date specified by the Competitive Procurement shall be deemed rejected.

### **PROTESTS**

This policy provides procedures for the submittal and evaluation of protests relating to all procurements, except purchases less than \$25,000.

In order to be considered, a protest must be filed in a timely manner, as described below, must satisfy all the applicable requirements described below and must be brought by an interested party, as defined below. Notice of the availability of these protest procedures and information on the applicable protest deadlines shall be provided to bidders and proposers in all solicitations in excess of \$25,000. The protest procedures shall be available on RCTC website.

The Executive Director will make the final determination on all protests submitted, and there shall be no further administrative recourse with the exception of protests filed in conjunction with procurements funded in whole or in part by the Federal Transportation Agency (“FTA”).

Protests submitted relating to procurements of \$25,000 or less will not be considered by RCTC and will be returned.

Any protest submitted shall be evaluated in accordance with the procedures described below.

**1.1 Protest Grounds – General**

Prior to receipt of bids/proposals, a protest may be submitted on the basis of one or more of the following grounds:

- The solicitation package contains unduly restrictive specifications or scope of work.
- The solicitation package violates local, state, or federal law or regulation.

After receipt of bids/proposal and after an action relating to the selection of a consultant/contractor, a protest may be submitted on the basis of one or more of the following grounds:

- RCTC fails to adhere to the evaluation process set forth in the solicitation package.
- RCTC fails to follow its own procurement policies and procedures.
- RCTC made a clerical or mathematical error during evaluation of the bid/proposal.

**1.2 Protest Submittal Criteria – General**

In order for a protest to be considered, the submittal must meet each one of the following criteria:

- Must be submitted on a timely basis. “Timely” is defined under the Definition of Terms below. If the protest is not timely, the protest may not be considered and may be returned without response other than the determination that it is untimely filed.
- Must be submitted by an interested party. “Interested Party” is defined under the Definition of Terms below.
- Must identify the solicitation or contract number being protested.
- Must be submitted in writing.
- Must include all supporting documentation for each material issue raised in the protest.
- Must include a detailed statement of the legal and/or factual grounds for each material issue identified in the protest.
- Must describe the resolution to the protest desired by the interested party.
- Must be signed by a properly authorized representative of the interested party.

RCTC reserves the right to waive minor, non-substantive, or trivial deficiencies in a protest at its sole discretion.

**1.3 Protests Filed Prior to Submittal of Bids/Proposals**

If the protest is determined to be timely and meets the criteria identified in 1.2 above, the following actions will be initiated:

- 1.3.1 All bidders/proposers will be notified within ten (10) working days that a protest has been filed and will be provided with a copy of the protest.
- 1.3.2 Bidders/proposers will be given an opportunity to respond to the protest.
- 1.3.3 The date for receipt of bids/proposals may be delayed, at the sole discretion of the Protest Officer, to provide adequate opportunity to resolve the protest.
- 1.3.4 The Protest Officer, at his/her discretion, may meet, either in person or over the telephone, with the Protestor to discuss the protest and/or perform additional fact finding.
- 1.3.5 Should the Protestor determine, at this point or any other point in the evaluation of the protest that he/she wishes to withdraw the protest, a written request to withdraw will be provided to the Protest Officer and the Protest Officer will promptly notify all bidders/proposers that the protest has been withdrawn.
- 1.3.6 The Protest Officer will research the protest and may call upon any resources he/she feels are necessary and appropriate to assist in the evaluation of the protest.
- 1.3.7 The Executive Director will render a determination to uphold or deny the protest, which determination shall be final.
- 1.3.8 If the protest is upheld, an addendum to the solicitation may be issued to all bidders/proposers and the date for receipt of bids/proposals may be extended, at the Executive Director's sole discretion, to provide adequate time for all potential bidders/proposers to respond to the addendum.
- 1.3.9 If the protest is denied, the solicitation may be continued without further delay.
- 1.3.10 Acceptance of bids/proposals will be subject to the administrative resolution of any protests timely filed.

**1.4 Protests Submitted After Receipt of Bids/Proposals and Relating to Selection of Consultant/Contractor**

If the protest is determined to be timely and meets the criteria identified in 1.2 above, the following actions will be initiated:

- 1.4.1 The potential successful bidder/proposer will be notified within ten (10) working days of receipt of the protest that a protest has been filed and a copy of the protest will be provided to the potential successful offeror.
- 1.4.2 The potential successful bidder/proposer will be provided an opportunity to respond to the protest and provide any information the bidder/proposer believes is important to the issues raised in the protest. The length of time for response shall be determined by the Protest Officer and shall be based on the complexity of the issues raised in the protest.



- 1.4.3 The Protest Officer, at his/her discretion, may meet, either in person or over the telephone, with the Protestor to discuss the protest and/or perform additional fact finding.
- 1.4.4 Should the Protestor determine, at this point or any other point in the evaluation of the protest that he/she wishes to withdraw the protest, a written request to withdraw will be provided to the Protest Officer and the Protest Officer will promptly notify the successful bidder/proposer.
- 1.4.5 Depending on the nature and complexity of the protest, the Protest Officer may, after evaluating all of the information available, provide a written recommendation to the Executive Director that the protest should be denied or upheld, in whole or in part. The recommendation will include reasons supporting the recommendation.
- 1.4.6 The Protest Officer may call upon one or more experts, either from within or outside RCTC, to evaluate the merits of the protest. The expert(s) may provide a written opinion regarding the merits of the protest and may provide a recommendation for consideration by the Protest Officer that the protest be denied or upheld, in whole or in part.
- 1.4.7 The Protest Officer may convene a Protest Evaluation Team to evaluate the merits of the protest. The Protest Evaluation Team may provide a written opinion regarding the merits of the protest and may provide a recommendation for consideration by the Protest Officer that the protest be denied or upheld, in whole or in part.
- 1.4.8 The Protest Officer shall review the recommendation and documentation provided by the expert(s) or Protest Evaluation Team with Legal Counsel and shall prepare a recommended resolution of the protest for consideration by the Executive Director.
- 1.4.9 If the Executive Director upholds the protest, in whole or in part, he/she may direct such actions, as he/she deems appropriate.
- 1.4.10 If the Executive Director denies the protest, the challenged determination will move forward.

The Executive Director's decision will be provided to the Protestor and to the potential successful bidder/proposer. The Executive Director's decision shall be final and there shall be no further administrative recourse at the local level.

## 1.5 Protests Relating to Federally Funded Procurements

If a procurement is federally funded, the Protestor may pursue a remedy through the FTA. Any such protest must be filed in accordance with FTA Circular 4220.1E or most current version.

Reviews of Protests by FTA may be limited to: (1) RCTC's failure to have or follow its protest procedures (2) RCTC's failure to review a complaint or protest and/or (3) Violations of federal law or regulation.

- 1.5.1 An appeal to FTA must be received by the cognizant FTA regional or headquarters office within five (5) working days of the date the Protestor learned or should have learned of an adverse decision by RCTC or other basis of appeal to FTA.
- 1.5.2 The Protestor shall provide a copy of all correspondence provided to the FTA to RCTC's Protest Officer.
- 1.5.3 Award of any proposed contract may be delayed by RCTC pending resolution of the protest to FTA unless one or more of the following conditions is present:
  - The items or services being procured are urgently required.
  - Delivery or performance will be unduly delayed by failure to make an award promptly.
  - Failure to make a prompt award will otherwise cause undue harm to RCTC.

### *DEFINITION OF TERMS*

*Interested Party:* If the protest is based on the content of a solicitation, an interested party is any bidder/proposer or potential offeror. If the protest is related to selection of a contractor, an interested party is a bidder/proposer that would be next in line as a prime contractor for award of a contract, if the protest were upheld.

*Protest Officer:* The Purchasing Agent is the Protest Officer, unless otherwise designated by the Executive Director. The Protest Officer is to receive and evaluate protests and will recommend to the Executive Director either that the protest be upheld or denied. The Protest Officer should not have participated in the evaluation of bids/proposals received.

*Timely Filed Protest:*

- 1 A protest that addresses the content of the solicitation package must be received by the Protest Officer within seven (7) calendar days after all requests for clarifications and requests for approved equals have been answered by RCTC. Day 1 is the day after the date of RCTC's answer. If no requests for clarification or approved equals are received, a protest regarding the content of the solicitation must be received by the Protest Officer within seven (7) calendar days after the period for requests for clarifications or approved equals has closed. This period shall be defined in each solicitation package.

- | For protests submitted after receipt of bids/proposals, the protest must be received by the Protest Officer within seven (7) calendar days after the Commission takes action, or such other time period as may be specified in the solicitation document. Day 1 is defined as the day after the Commission meets and takes action.
- | Any solicitation for which contract award is not made by the Commission will include a date certain by which a protest must be filed in order to be considered timely. A protest received after the date certain identified in the solicitation may be considered untimely, may not be considered, and may be returned without response. In all other respects, such a protest will be handled in accordance with 1.3 and 1.4 of this policy.

**WRITTEN RECORD OF PROCUREMENT HISTORY**

RCTC shall maintain records detailing the history of each procurement. At a minimum, these records shall include:

- | The rationale for the method of procurement,
- | Selection of contract type,
- | Reasons for contractor selection or rejection, and
- | The basis for the contract price.

## CONTRACTING POLICIES

### CONTRACT AMENDMENTS AND MODIFICATIONS

This policy applies to all contract amendments and modifications for contracts and purchase orders awarded by RCTC with the exception of public works/construction contracts which are governed separately through the written contract.

To be binding, all contract amendments and modifications shall comply with applicable laws and regulations, be properly documented and approved. All amendments and modifications should be included in the procurement file. Amendments and modifications shall be within the scope of the original contract, in writing and fully signed before the work is performed.

### RECURRING CONTRACTS

Continued renewal contracts are multi-year contracts. During the budget process, funds should be requested to continue funding for the contracts. In general, the process is routine unless there are changes to the contract, not noted in the originally approved contract. In this case, Staff shall request Commission approval for the amended contract.

### INCORPORATION OF FEDERAL PROVISIONS

Federal procurement requirements apply to all federally funded procurements. Projects involving federal funds must comply with all contractual provisions required by FTA and FHWA including but not limited to, provision relating to the following:

Sec.	Contract Clause	Applicability to Type of Contract
1	Fly America Requirements	When Transportation Paid by FTA Funds
2	Buy America Requirements	Value > \$100 K for Construction, Goods, Rolling Stock
3	Charter Bus and School Bus Requirements	Operational Service
4	Cargo Preference Requirements	Equipment/Material/Commodities Transported by Ocean
5	Seismic Safety Requirements	New Building Construction / Additions
6	Energy Conservation Requirements	<b>All</b>
7	Clean Water Requirements	Value > \$100 K
8	Bus Testing	Rolling Stock / Turnkey Acquisition
9	Pre-Award and Post Delivery Audit Requirements (include FMVSS Cert)	Rolling Stock / Turnkey Acquisition
10	Lobbying	<b>All</b>
11	Access to Records and Reports	<b>All</b>
12	Federal Changes	<b>All</b>
13	Bonding Requirements	Construction > \$100 K and at discretion of FST for others
14	Clean Air	Value > \$100 K
15	Recycled Products	Value > \$10 K in Fiscal Year
16	Davis Bacon Act and Copeland Anti-Kickback act	Public Works / Construction > \$2000

17	Contract Work Hours and Safety Standards Act	Construction > \$2000, Rolling Stock, Operational > \$2,500
18	[Reserved]	
19	No Government Obligation to Third Parties	<b>All</b>
20	Program Fraud and False or Fraudulent Statements and Related Acts	<b>All</b>
21	Termination	Value > \$10 K
22	Government-Wide Debarment and Suspension (Nonprocurement)	Value > \$25 K
23	Privacy Act	<b>All</b>
24	Civil Rights Requirements	<b>All</b>
25	Breaches and Dispute Resolution	Value > \$100 K
26	Patent and Rights in Data	Research Projects Only
27	Transit Employee Protective Agreements	Transit Operations
28	Disadvantaged Business Enterprise (DBE)	<b>All</b>
29	[Reserved]	
30	Incorporation of Federal Transit Administration (FTA) Terms	<b>All</b>
31	Drug and Alcohol	Operational Service / Safety Sensitive

Appendix A is a list of each of these clauses as shall be contained in all applicable federally funded projects. Appendix B includes federal certificates to be obtained as part of the procurement and contracting process for all applicable procurements.

**NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

To the extent applicable, in federally funded projects RCTC will require all parties to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

## **APPENDIX A**

## **FEDERAL CLAUSES AND OTHER REQUIREMENTS**

### **1. Fly America Requirements**

The 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 subrecipients 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. The 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. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### **2. Buy America**

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

### **3. Charter Bus Requirements and School Bus Requirements**

#### **Charter Bus Requirements:**

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

**School Bus Requirements:**

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, CONTRACTORS and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

**4. Cargo Preference - Use of United States- Flag Vessels**

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**5. Seismic Safety**

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

**6. Energy Conservation**

CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 *et seq.*



## **7. Clean Water**

(1) The Contractor agrees to 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. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

## **8. Bus Testing**

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

## **9. Pre-Award and Post-Delivery Audit Requirements**

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling

stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

## **10. Lobbying Restrictions**

The CONTRACTOR agrees to:

(a) Refrain from using Federal assistance funds to support lobbying,

(b) Comply, and assure the compliance of each third party CONTRACTOR at any tier and each SUBCONTRACTOR at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

(c) Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

## **11. Access to Records**

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described

at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.36(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

## **12. Federal Changes**

CONTRACTOR 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 Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (10) dated October, 2003), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

### **13. Bonding Requirements**

#### **Bid Bond Requirements (Construction)**

##### **(a) Bid Security**

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

##### **(b) Rights Reserved**

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

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of RCTC, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by RCTC as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense RCTC for the damages occasioned by default, then the undersigned bidder agrees to indemnify RCTC and pay over to RCTC the difference between the bid security and RCTC's total damages, so as to make the RCTC whole.

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

#### **Performance and Payment Bonding Requirements (Construction)**

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

##### **(a) Performance bonds**

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless RCTC determines that a lesser amount would be adequate for the protection of the RCTC.

2. RCTC may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. RCTC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, RCTC may require additional protection as required by subparagraph 1 if the contract price is increased.

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

The Contractor may be required to obtain performance and payment bonds when necessary to protect RCTC interest.

(a) The following situations may warrant a performance bond:

1. RCTC property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

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

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless RCTC determines that a lesser amount would be adequate for the protection of RCTC.

2. RCTC may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price.

RCTC may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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

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

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

### **Advance Payment Bonding Requirements**

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

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

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

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

1. The Contractor warrants to RCTC, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by RCTC, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the RCTC and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to RCTC. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to RCTC written by the same corporate

surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

#### **14. Clean Air**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **15. Recycled Products**

To the extent applicable, the CONTRACTOR agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

#### **16. Davis-Bacon and Copeland Anti-Kickback Acts**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually

performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.



(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the

recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - RCTC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, RCTC may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to RCTC for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S.

Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training

Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the

Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually

performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a

person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## 17. Contract Work Hours and Safety Standards Act

The CONTRACTOR agrees to comply, and assures the compliance of each third party CONTRACTOR and each SUBCONTRACTOR at any tier of the Project, with the following employee protection requirements for contract employees

(a) **Overtime requirements** - No CONTRACTOR or SUBCONTRACTOR contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the CONTRACTOR and any SUBCONTRACTOR responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and SUBCONTRACTOR shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(c) **Withholding for unpaid wages and liquidated damages** – The CONTRACTOR shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONTRACTOR or SUBCONTRACTOR under any such contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or SUBCONTRACTOR for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(d) **Subcontracts** - The CONTRACTOR or SUBCONTRACTOR shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the SUBCONTRACTORS to include these clauses in any lower tier subcontracts. The prime

CONTRACTOR shall be responsible for compliance by any SUBCONTRACTOR or lower tier SUBCONTRACTOR with the clauses set forth in this section.

**18. [Reserved]**

**19. No Government Obligation to Third Parties**

(a) RCTC and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to RCTC, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the SUBCONTRACTOR who will be subject to its provisions.

**20. Program Fraud and False or Fraudulent Statements or Related Acts.**

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

(b) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

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

## 21. Termination

Upon written notice, CONTRACTOR agrees that the Federal Government may suspend or terminate all or part of the Federal financial assistance provided herein if CONTRACTOR has violated the terms of the Grant Agreement or Cooperative Agreement, or if the Federal Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of the Grant Agreement or Cooperative Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement. Termination of any Federal financial assistance for the Project will not invalidate obligations properly incurred by CONTRACTOR before the termination date, to the extent those obligations cannot be canceled. If, however, the Federal Government determines that CONTRACTOR has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable and appropriate use of the Project real property, facilities, or equipment, or has failed to comply with the terms of the Grant Agreement or Cooperative Agreement, the Federal Government reserves the right to require CONTRACTOR to refund the entire amount of Federal funds provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant

Agreement or Cooperative Agreement

- (a) Termination for Convenience: RCTC may terminate this contract, in whole or in part, at any time by written notice to the CONTRACTOR. The CONTRACTOR shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit its termination claim to RCTC to be paid the CONTRACTOR. If the CONTRACTOR has any property in its possession belonging to RCTC, the CONTRACTOR will account for the same, and dispose of it in the manner RCTC directs.
- (b) Termination for Default: If the CONTRACTOR does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the CONTRACTOR fails to perform in the manner called for in the contract, or if the CONTRACTOR fails to comply with any other provisions of the contract, RCTC may terminate this contract for default. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by RCTC that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or beyond the control of the CONTRACTOR, RCTC, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.
- (c) Termination for Cost-Type Contracts: RCTC may terminate this contract, or any portion of it, by serving a notice of termination on the CONTRACTOR. The notice shall state whether



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

## **22. Government-wide Debarment and Suspension (Nonprocurement)**

The CONTRACTOR agrees to comply, and assures the compliance of each third party CONTRACTOR and SUBCONTRACTOR at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29.

## **23. Privacy Act**

The following requirements apply to the CONTRACTOR and its employees that administer any system of records on behalf of the Federal Government under any contract:

(a) The CONTRACTOR agrees to 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, the CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. The CONTRACTOR 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 contract.

(b) The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **24. Civil Rights**

The following requirements apply to the underlying contract:

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate

against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(i) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(ii) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(iii) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONTRACTOR agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

(c) The CONTRACTOR also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **25. Breaches and Disputes**

- (a) Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of RCTC. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to RCTC. In connection with any such appeal, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of RCTC shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.
- (b) Performance During Dispute - Unless otherwise directed by RCTC, CONTRACTOR shall continue performance under this Contract while matters in dispute are being resolved.
- (c) Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- (d) Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between RCTC and the CONTRACTOR arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of California.
- (e) Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by RCTC, Architect or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **26. Patent and Rights in Data.**

**A. Rights in Data** - This following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c) , however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract.

Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education,

individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## **27. Transit Employee Protective Arrangements.**

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R.

Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body

subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in

connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## **28. Disadvantaged Business Enterprise**

The CONTRACTOR agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

(a) The CONTRACTOR agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(b) The CONTRACTOR agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The CONTRACTOR agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT. The CONTRACTOR's DBE program, as required by 49 C.F.R. Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Implementation of this DBE program is a legal obligation, and failure to carry out its terms shall be treated as a violation of the Grant Agreement or Master Agreement. Upon notification to the CONTRACTOR of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

## **29. [Reserved]**

## **30. Incorporation of FTA 4220.1E Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, 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. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any RCTC request, which would cause RCTC to be in violation of the FTA terms and conditions.

### **31. Substance Abuse**

The CONTRACTOR agrees to comply with the following Federal substance abuse regulations:

(a) Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 *et seq.*

(b) Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable. The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or RCTC, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process.



## **APPENDIX B**

**Buy America Certification requirement for procurement of steel, iron, or manufactured products.**

***Certificate of Compliance with 49 U.S.C. 5323(j)(1)***

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

***Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)***

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS**  
**FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

**Certificate of Compliance:**

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

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

Signature: \_\_\_\_\_

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

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

**Certificate of Non-Compliance:**

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

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

Signature: \_\_\_\_\_

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

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

**CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS**

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665. The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

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

Signature: \_\_\_\_\_

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

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

FEDERAL MOTOR VEHICLE SAFETY STANDARD CERTIFICATION

I, \_\_\_\_\_, certify on behalf of  
\_\_\_\_\_ that the vehicles to be manufactured  
comply with Federal Motor Vehicle Safety Standards as specified in 49 CFR 26.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

### Lobbying Certification

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUBCONTRACTORS shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The CONTRACTOR, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of CONTRACTOR'S Authorized Official

\_\_\_\_\_  
Name and Title of CONTRACTOR'S Authorized Official

\_\_\_\_\_  
Date

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters****Instructions for Certification**

1. By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, RCTC may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to RCTC if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact RCTC for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by RCTC.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, RCTC may pursue available remedies including suspension and/or debarment.

**"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"**

(1) The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

**Certification Disadvantaged Business Enterprise Program/Equal Employment Opportunity**

In accordance with Title 49, Code of Federal Regulations, Part 23, California Public agreements Code Section 10115, and other applicable Disadvantaged Business Enterprise (“DBE”) and Equal Employment Opportunity (“EEO”) rules and regulations, the CONTRACTOR declares that it had made a good faith effort to comply with established DBE goals, and that it has made a good faith effort meet established EEO goals, as evidenced below:

1. CONTRACTOR’S overall DBE participation rate: \_\_\_\_\_
2. Names/Locations of DBEs contacted by CONTRACTOR:  
\_\_\_\_\_
3. Names/Locations of DBEs selected by CONTRACTOR:  
\_\_\_\_\_
4. CONTRACTOR’S work force breakdown by race and gender:

TOTAL EMPLOYEES as of \_\_\_\_\_

JOB CATEGORIES	EMPLOYEES									
	Male					Female				
	Wht	Blk	Hsp	Asn	Nat	Wht	Blk	Hsp	Asn	Nat

- Officials & Managers:
- Professional:
- Technical:
- Sales:
- Office/Clerical:
- Craftsmen:
- Laborers:
- Service:

Note: The above DBE/EEO Affidavit is part of CONTRACTOR’S Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this DBE/EEO Affidavit.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

TITLE \_\_\_\_\_ COMPANY NAME \_\_\_\_\_

**Certification Regarding Alcohol Misuse and  
Prohibited Drug Use**

1) As required by FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," at 49 CFR part 655, subpart I, the undersigned certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, "Prevention of Alcohol Misuse and prohibited Drug Use in Transit Operations," 49 CFR part 655.

2) The undersigned 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 Department of Transportation, Federal Transit Administration, Master Agreement (FTA MA (9)), between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. The undersigned's failure to so comply shall constitute a material breach of contract.

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

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

Title \_\_\_\_\_

## **APPENDIX C**

**APPENDIX C – QUICK REFERENCE GUIDE**

Item to Be Procured	Form of Agreement	Procurement Process	Approval Authority
Services and Supplies (up to \$2,500)	Purchase Order or Letter Agreement	Ø Requisition	Ø Requisition approved by unit manager
Services, Supplies, and Equipment (\$2,501 - \$50,000)	Purchase Order or Letter Agreement	Ø Requisition Ø Minimum of 3 written or oral quotes, unless not feasible	Ø Requisition approved by unit manager Ø PO or Letter Agreement approved by Purchasing Agent
Services, Supplies, and Equipment (> \$50,000)	Agreement	Ø Requisition Ø Advertise Request for Proposal or Request for Qualifications Ø Evaluation and selection of vendor Ø Commission for approval to award contract Ø After Commission approval, issue Notice to Proceed	Ø Requisition approved by Purchasing Agent Ø PO or Letter Agreement approved by the Commission unless the purchase solely consists of budgeted inventory materials, supplies and equipment up to \$100,000
Construction Contracts	Agreement	Ø Requisition Ø Complete final Plans, Specifications and Estimates (“PS&E”). Ø Advertise Notice Requesting Bids (“NRB”) in newspapers, F.W. Dodge, and RCTC website. Ø Pre-bid meeting Ø Sealed bids usually opened within 1 hour after receipt in presence of all bidders. Ø Contract awarded to lowest priced responsive and responsible bidder. Ø Successful bid presented to Commission for final award and approval Ø After Commission approval, Notice to Proceed issued	Ø Budgeted: o Up to \$50,000 – Purchasing Agent o Over \$50,000 – Board Ø Unbudgeted o Up to \$25,000 – Purchasing Agent o Over \$25,000 -- Commission
Capital Acquisitions	Purchase Order or Agreement	Ø Requisition Ø If up to \$25,000, minimum of 3 written or oral quotes Ø If over \$25,000, competitive bid process	Ø Budgeted o Up to \$100,000 – Purchasing Agent o Over \$100,000 – Commission Ø Unbudgeted o Up to \$25,000 – Purchasing Agent Ø Over \$25,000 -- Commission