



SUPPLEMENTAL PROCUREMENT
SECTION

FOR THE ACQUISITION OF GOODS
AND SERVICES UNDER FEDERAL
TRANSIT ADMINISTRATION GRANT
PROGRAMS

CITY OF FRESNO-DEPARTMENT
OF TRANSPORTATION-FRESNO
AREA EXPRESS (FAX)

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Article I. Purpose

These supplemental procedures shall apply when the Department of Transportation/Fresno Area Express (FAX) enters into third party agreements utilizing Federal Transit Administration (FTA) funds. When the City of Fresno (City) municipal code or charter occupies the same subject area of guidance provided in these procedures, the more restrictive requirements shall apply.

Article II. Standards of Conduct and Conflicts of Interest

Section 2.01 Conflict of Interest

There will be uniform and equitable application of the Standards of Conduct of the City of Fresno, Department of Transportation/Fresno Area Express (FAX) involving all activities associated with the procurement of goods and services. This section also defines responsibility to identify and prevent real or apparent Conflicts of Interest.

Prior to the issuance of a procurement solicitation, informational and research contacts with prospective vendors may be made for the purpose of gathering data. However, in making such contacts, employees, officers, board members, and agents shall avoid any commitment or implication of a possible future award.

Accordingly, no request for complimentary services or supplies, which may imply an obligation on the part of FAX, or the City, shall be made. Requests for testing services, product samples, or demonstrations, and free trips to examine vendor products are to be avoided.

Whenever procurement is in process (e.g., during the solicitation, evaluation, negotiation, and award phases) all contacts with potential contractors or vendors shall be made through the Purchasing Unit..

Employees, officers, directors, and agents of the City are also subject to the laws of the City and State of California concerning conflicts of interest. Monetary penalties and, in some cases, criminal penalties are imposed by California law for violations. In addition, City employees are subject to discipline for a violation that could lead to or result in termination of employment.

Section 2.02 Gratuities and Kickbacks

No member of the groups listed above will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub- agreements. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by the City of Fresno.

Section 2.03 Personal Conflicts of Interest

No City employee, officer, Board member, agent or contract shall participate in the selection, award or administration of a third party contract or other agreement if a real or apparent conflict of interest would be involved. Such a conflict of interest arises, whether real or apparent, when any of the following has a financial or other interest in the firm(s) considered or selected for award:

- a) An employee, officer, board member, or agent of the City;
- b) Any member of their immediate family, including but not limited to, husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-

in-law, son-in-law, and daughter-in-law;

- c) Their partner or business associate; or
- d) A company or organization which is about to employ any of the above.

Apparent or Appearance of Conflict is based on a reasonableness standard i.e. would a reasonable person with knowledge of all material facts believe there appears to be a conflict?

Section 2.04 Organizational Conflict of Interest

An organizational conflict of interest may be real or apparent and arises where, because of other activities, financial interests, relationships, or contracts - a contractor is unable, or potentially unable, to render impartial assistance or advice to the City. Such a conflict exists in circumstances where the contractor's objectivity is or might be impaired or where the contractor has an unfair competitive advantage.

Organizational conflicts lead to two (2) distinct problems - bias or an unfair competitive advantage.

- a) Bias is a situation where an advisor is placed in a position that creates an incentive to distort advice or decision making.
- b) Unfair competitive advantage occurs when one contractor has information not available to other contractors in the normal course of business. For example, an unfair competitive advantage would occur when a contractor developing specifications or work statements has access to information that the City has paid the contractor to develop, or information which the City has furnished to the contractor for its work, when that information has not been made available to the public and to other offerors. Because this information enhances the contractor's competitive position in the procurement process, it represents an unfair competitive advantage over other offerors.

The City's procurement activities shall be structured to ensure full and open competition and to eliminate or minimize any unfair competitive advantage in circumstances where an organizational conflict, real or apparent, is presented. Appropriate structural steps are dependent upon the particular circumstances surrounding the procurement and might include: prohibiting the contractor from participating in the procurement, the bid process or in evaluation of bids, fully disclosing all information to all prospective offerors for a reasonable amount of time, adjustment of specifications to address any potential advantage, among others.

Section 2.05 Confidential Information

No member of the groups listed above shall furnish advice or services to a firm which is bidding on or planning to bid on a contract with the City, or which is doing business presently with the City. No member shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or

by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by the City of Fresno.

Article III. Procurement Authority

This procedure is intended to establish guidelines that apply when the City enters into contracts that may include services, goods, equipment, travel, products and/or the use of subcontractors and consultants.

The Purchasing Manager is the designated "Contracting Officer" for FAX and the City of Fresno. The Purchasing Manager may delegate certain contracting authority to subordinate staff or FAX within the limitations of this procedure. The person's delegated authority by the Purchasing Manager exercises Contracting Officer authority on behalf of FAX. The City may organizationally establish a Contracting Officer's position to ensure compliance with these procedures and to exercise certain authority expressed in these policies.

All delegations of Contracting Officer authority shall be in writing.

The Transportation Director is authorized to enter into contracts on behalf of FAX on all Federally Funded FAX Contracts not requiring City Council or the Purchasing Managers approval.

The City Council shall approve all contracts requiring approval by the City Charter, Administrative Orders, or otherwise designated by the City Council to the Purchasing Manager.

The Transportation Director is authorized to execute change orders and modifications to an amount not to exceed the City Council approval threshold.

Once approval is obtained for a given transaction, the Transportation Director, with the power of re-delegation, shall execute all contracts.

Final authority for purchasing actions and decisions are to be made by the City Council except as delegated to the Purchasing Manager. The Purchasing Manager may delegate Contracting Officer authority and authorize the re-delegation of Contracting Officer authority.

For any contract to be valid the City Attorney shall approve it as to form.

Section 3.01 Purchase Requisition

Whenever any officer requires any materials, supplies, equipment, services, and/or public works construction for this or her office or department, he or she shall file with the Purchasing Manager a requisition of forms provided by the Purchasing Manager. . Such requisition shall bear the approving signature or electronic equivalent of the officer or deputy who has jurisdiction of the department in which it originated. Such requisition shall specifically describe the article or articles and the kind and quantity desired. It may also specify the brand or make desired as long as "or equal" provisions are included along with the salient characteristics

required for consideration as an equal product or service.

Section 3.02 Independent Cost Estimate (ICE)

An Independent Cost Estimate shall be included with all purchase requisitions. The term "Independent" refers to the fact that the estimate cannot be provided by a prospective bidder or proposer for the services being solicited. The level and complexity of the estimate shall be commensurate with the contract performance risk. This estimate may be used as an aid to the subsequent cost or price analysis.

Section 3.03 Most Efficient and Economic Purchase

Departments, during their annual budget process, should determine the procurement actions necessary to sustain their operations through the fiscal year. A list of these procurement actions should be forwarded to the Purchasing Department annually. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase and to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The City considers various procurement sources to ensure economical purchases including, but not limited to GSA, State of California and municipal cooperatives.

The Contracting Officer shall review items requested by the using departments to determine the most efficient and economic means of satisfying a requirement. This shall include combining like orders to reduce overall costs. The review shall include a review of Federal surplus property in lieu of purchasing new equipment or property whenever feasible and where such purchase will reduce the overall project costs.

Splitting or separating into smaller work orders, projects, purchase order or contracts for the purpose of evading the provisions of this procedure is prohibited. Splitting or separating shall mean and include reducing the amount of any service to be furnished to FAX under circumstances where there is reasonable knowledge that the same service will be additionally required, there are funds available for that project or purchase and the sole purpose is to knowingly avoid the requirements herein. In instances where it is deemed to be to the benefit of FAX to split or separate a transaction, the proposed splitting or separation shall be referred to the City Council, and the Purchasing Manager where appropriate for its findings and determination prior to award.

Section 3.04 Contract Administration System

FAX must maintain a system to administer its third party contracts adequately to ensure that its contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal requirements. The primary responsibility for contract administration is with the Contracting Officer. This responsibility may be delegated to a Technical

Representative such as a Project Manager. This delegation shall ensure that the responsibilities for contract quality, cost, and schedule performance measurement are evaluated by objective means prior to payment of invoices. The signature on the invoice should indicate that FAX staff has satisfactorily performed this evaluation before payment.

Article IV. Methods of Procurement

Section 4.01 General

The Contracting Officer shall incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not 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.

Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Evaluators and reviewers must follow the established criteria when rating the proposals.

Section 4.02 Procurement File Documentation

The Contracting Officer or designee is responsible for contract file documentation. The contract file documentation shall vary depending on the nature and the complexity of the procurement action. All files, excluding Micro Purchases, should contain an Independent Cost Estimate (ICE), a copy of the solicitation, the proposal or bid, all executed certifications and assurances, the price or cost analysis, evaluation forms, responsibility determinations, the executed agreement, and any other pertinent information.

Micro Purchases may be documented on a single sheet containing the following at a minimum:

- a) That the price is fair and reasonable
- b) How the price was determined fair and reasonable by Staff

Small Purchases may be documented using the approved procurement file documentation checklist issued by the Contracting Officer. All files shall contain the following as a minimum:

- a) The reason for the contract type selection
- b) The name of the contractors solicited
- c) The reason for selecting the procurement method
- d) The reason for selecting the successful contractor
- e) How the price was determined fair and reasonable

Formal Purchases shall be documented using the approved procurement file documentation checklist issued by the Contracting Officer. All files shall contain the following as a minimum:

- a) The reason for the contract type selection
- b) The name of the contractors solicited

- c) The reason for the selecting the procurement method
- d) The reason for selecting the successful contractor
- e) How the price was determined fair and reasonable

Section 4.03 Micro-Purchases

Materials, Supplies, Equipment and Services equal to or less than \$3,500:

Purchases of \$3,500 or less are not subject to bidding requirements if the Contracting Officer or designee considers the price offered as fair and reasonable. The Contracting Officer may accept one quotation from responsible and responsive firms. Purchases shall not be split to avoid more rigorous procedural requirements. The Contracting Officer shall rotate these micro purchases among qualified businesses, with a focus on Disadvantaged Business Enterprises (DBE).

For procurements totaling \$3,500 or less, the Contracting Officer or designee may utilize phone quotes or other appropriate means to ensure that a fair and reasonable price is paid. Verbal quotes are recorded and included in the procurement file documentation.

For purchases of more than \$3,500, the Small Purchasing requirements apply. .

Section 4.04 Small Purchases

Materials, Supplies, Equipment and Services and Public Works that are greater than \$3,500 and less than or equal to \$150,000 or the City of Fresno's formal bid limit:

Purchases in this range require written quotes to be solicited from at least three (3) Vendors. The Contracting Officer must make the determination that the price offered as fair and reasonable utilizing a price or cost analysis. The award is made to the proposer offering the bid or proposal most advantageous to the City. Small Purchase can be solicited utilizing either a quotation that contemplates award to the lowest evaluated price or may consider factors in addition to price. The Request for Quotation shall specify the basis for award consistent with the principles of bidding and competitive negotiations contained herein.

This process is to be documented on the bid record contained in the file documentation. A record indicating the procurement method used, the contract type, why the vendor was selected, what vendors were solicited, and how the price was determined fair and reasonable at a minimum should be documented in the procurement file. Award will be made to the firm that complies with the provisions of the request for quotations and provides the lowest responsive and responsible price or best value to the City.

Section 4.05 Formal Purchases

Materials, Supplies, Equipment, Public Works and Services greater than \$150,000 or the City of Fresno s formal bid limit:

Purchases of this amount require an appropriate formal competitive procurement process and must have the approval of the Purchasing Manager. Technical specifications and requirements will be prepared by the appropriate department head and submitted to the Contracting Officer, or designee, who will prepare and release appropriate Invitations for Bids (IFBs), Request for Proposals (RFPs), Request for Qualifications (RFQs), or comparable procurement methods . Authorization from the City Council is necessary to award of an IFB, RFP, RFQ, or other, above this threshold.

A record indicating the procurement method used, the contract type, why the vendor was selected, and how the price was determined fair and reasonable at a minimum should be documented in the procurement file.

Article V. Requests for Proposal

Section 5.01 Competitive Proposals

Competitive proposals are to be used when:

- a) The items desired cannot be precisely defined, described or standardized;
- b) The contract is for research and development with an end product that may be conceptual in nature;
- c) The technical aspects and price may be negotiated;
- d) Discussions may be necessary during the solicitation process;
- f) Quantity and contractual factors must be considered along with price; or
- g) Artistic and aesthetic value are more important considerations in evaluating the proposal than the price;

The following steps are taken in competitive proposal procurements:

- a) **Review of the Requisition and Independent Cost Estimate**
The Contracting Officer shall review the requisition to insure that it has the proper approvals, that the requisition is accompanied by a sufficient technical description of the work to be performed, and that an Independent Cost Estimate accompanies the requisition.
- b) **Request for Proposal Scoring and Evaluation**
The Contracting Officer shall determine, in coordination with the Project Manager and end customer what factors shall be considered in addition to price. The factors that will serve as the basis of the award shall be clearly stated in the RFP. Price must be a factor in all RFPs except for solicitations for Architectural and Engineering Services.

Typical Factors are:

- a) Contractor Experience on Similar Projects;
- b) Experience of Project Management Personnel;
- c) Past Performance;
- d) Clarity of Work Statement;
- e) Price.

The factors shall be stated in the RFP including a statement of the relative value of each item. The relative value of technical factors shall be stated in terms that communicate to the potential offerors that the price is worth more, less or the same as all technical factors combined.

. Numerical ratings are affective when conducting qualifications based selections for Architect and Engineering Services where price will not be rated. Adjectival ratings are appropriate when it is important to avoid inadvertent price and technical trade-offs. Adjectives such as Superior, Satisfactory, Marginal, and Unsatisfactory may be used. Color ratings may also be used such as Blue, Green, Yellow and Red. As long as the ratings are assigned an objective definition used to discriminate among the proposals, they may be used in the evaluation of the RFP. When Adjectival ratings are used, the award will be made based on the

proposal providing the best value to the City when price and other factors are considered.

A minimum score in each technical area must be established to avoid awarding a contract to a vendor who has an unacceptable rating in any of the technical areas.

The evaluation factors and sub-factors to be used in scoring by the evaluation team must be developed prior to reviewing the proposals.

c) Prepare Request for Proposals (RFP)

A Request for Proposal consists of a number of provisions, both project specific and general. The department initiating the procurement should prepare project specific provisions of the RFP in coordination with the Contracting Officer. Contracting Officer is responsible for general provisions and for assembly of the RFP and ensuring that it complies with all procurement policies and is consistent with all-applicable Federal, State and Local procurement rules and regulations.

The project specific sections of the RFP shall specifically describe the actual minimum materials and/or services needed; the time for providing same; the procedure by which a prospective offeror may examine plans and specifications, if any; the criteria by which proposals will be evaluated and the relative importance of each factor, and the closing date for submission of proposals which must give sufficient time to permit a proper response.

d) Develop Proposers List

The department initiating the procurement shall develop a list of prospective Proposers. In addition, the Contracting Officer shall maintain a file of Proposers interested in particular types of contracts. Prospective contractors should possess the ability to perform successfully, a good record of past performance, integrity, adequate financial and technical resources, and any other relevant factors.

The Proposers list shall be developed with consideration of the City's DBE program.

e) Methods and Timing of Soliciting Proposals

As a goal, The City will attempt to provide not less than 28 calendar days for preparation of proposals in competitive proposal procurements.

At least three (3) financially and technically qualified prospective bidders will be notified of the RFP, if possible. Pre-invitation notices may be furnished to a sufficient number of prospective bidders so as to elicit adequate competition.

Notices inviting proposals shall be displayed at the City's Purchasing office, or at other appropriate public places such as the City website and shall be published no less than one time in a newspaper of general circulation and may be published in trade journals and magazines as deemed necessary or appropriate. Publication in a newspaper shall allow sufficient time for a responding party to submit a proposal but in no case shall the publication be made less than 10 days prior to the

proposal due date.

f) Pre-Proposal Conference

A pre-proposal conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are opened. The pre-bid conference shall never be used as a substitute for amending a defective or ambiguous request. Attendance by potential bidders or proposers may be mandatory or voluntary depending on the circumstances of the procurement.

g) Amendments of RFP's

If after issuance of requests for proposals, but before the time set for opening of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying bidders of an extension of time by fax, e-mail or telephone. Such notification should be confirmed in the amendment.

Any information given to a prospective bidder concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if the lack of such information would be prejudicial to uninformed proposers and such clarification of information may be a consideration affecting any proposers' response to the solicitation. The amendment shall be sent to each concern to which the RFP has been furnished.

Each amendment issued to a Request for Proposals shall:

- a) Be serially numbered and dated;
- b) Include the number, date and a description of the original RFP concerned;
- c) Clearly state the changes made in the RFP and the extension of the due date, if any; and
- d) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

h) Cancellation of RFP's

Requests for Proposals should not be canceled unless cancellation is clearly in FAX's interest (e.g., such as where there is no longer a requirement of the material or service or where amendments to the request would be of such magnitude that a new request is desirable). Where a request is canceled, proposals, which have been received, shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued.

The notice of cancellation shall identify the Request for Proposals; briefly explain the reason the request is being canceled; and where appropriate assure prospective proposers that they will be given an opportunity to compete on any re-

solicitation of proposals or any further requirements for the type of material or service involved.

If the Request for Proposals is cancelled before the time set for proposal submittal, this fact shall be recorded in the file, together with a statement of the number of concerns invited to submit proposals and the number of proposals received.

i) Receipt of Proposals

Proposals shall be submitted so as to be received in the office designated in the Request for Proposals not later than the exact time set in the Request for Proposals. The receipt of a late proposal may be grounds for disqualification. The only acceptable evidence to establish the time of receipt at the Purchasing office is the time/date stamp of which shall be placed on the proposal wrapper immediately upon receipt. . The timeliness of proposals is the sole responsibility of the proposer.

j) Modification or Withdrawal of Proposals

Any Bidder may withdraw their proposal, either personally or by telegraphic or written request, received by the Purchasing Department at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of Bidders in preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. .

k) When to Conduct Negotiations

Subject to the exceptions below, after receipt of initial proposals, written or oral discussions may be conducted with all responsible and responsive offerors who submit proposals within a competitive range when price and other factors are considered. If discussions are conducted with an offeror, discussions must be conducted with all offerors within the competitive range. Offerors shall be notified if their proposals are no longer under consideration and they have been excluded from the competitive range. No information or debriefing will be held with excluded offerors until the award recommendation has been made.

Discussions are not mandatory and the City shall reserve the right to accept initially priced offers. Discussion after receipt of initial proposals is not required in the following cases:

- a) Procurement is for supplies for which prices or rates are fixed by law or regulation;
- b) Time for delivery will not permit discussions;
- c) The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price

l) Subject Matter of Negotiations

Discussions may be held to provide clarifications, point out deficiencies in a particular proposal, and to gain information necessary towards making an award decision. Restrictions on the information that may be revealed to the offerors by

City personnel during the course of negotiations include:

- a) City personnel shall not furnish information to a potential supplier which may afford them an advantage over other suppliers;
- b) After receipt of initial proposals no information contained in any proposal or information regarding the number or identity of offerors shall be made available until the bid is awarded;
- c) When it is necessary to rectify ambiguities, mistakes or omissions, an appropriate amendment shall be furnished to all offerors in a timely manner; or
- d) "Auction techniques", such as advising offerors of their price relationship with others, are prohibited.

Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations shall be offered an equitable opportunity to submit such price, technical, or other data necessary as a result of the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations. Revisions to proposals must be submitted by such date.

Where the Request for Proposals sets forth one requirement and after receipt of proposals, either due to change or innovation by an offeror, it becomes apparent that the project needs may be better fulfilled in another manner within the general scope of the solicitation, all offerors shall be appropriately advised in writing by an amendment and further discussions or negotiations shall follow.

m) Conduct of Negotiations

Evaluation of offerors' or contractors' proposals, including price revision proposals, by all personnel concerned with the procurement, as well as subsequent negotiations with the offeror or contractor shall be completed expeditiously.

Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations.

Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or to the price to be paid. Discussions and clarifications may be held but the Contracting Officer must be careful not to share technical information regarding any particular proposal with another proposer, as technical leveling is not permitted. Basic questions should not be left for later agreement during price revision or other supplemental proceedings.

Cost or profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

Price or cost analysis should be made in connection with every negotiated procurement action including contract modifications. Price Analysis is appropriate

when an evaluation can be made without the submission of cost data supporting each element of the proposed price. Cost Analysis shall be performed when the proposer is required to submit cost data in order to evaluate their cost proposal.

n) Notice Closing Negotiations

Such notice shall advise offerors that:

- a) Negotiations are being conducted;
- b) Offerors are being asked for their “best and final” offer, not confirm or reconfirm prior offers;
- c) Any revision or modification of proposals must be submitted specified by the date

o) Determining Reasonableness of Price

Price analysis is the process of examining and evaluating a prospective price without evaluation of the separate cost elements or proposed profit of the prospective supplier.

Cost analysis is the review and analysis of a contractor’s cost or pricing data and of the factors applied in projection from the data to the estimated costs, in order to form an opinion on the degree to which the contractor’s proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

As compared to price analysis, cost analysis involves a more detailed review of the offeror’s proposal and is used where the City has less assurance of a fair and reasonable price.

The following procedure for cost analysis is to be followed:

- a) Verify contractor’s cost data;
- b) Evaluate specific elements of costs and project this data to determine the effect on prices of such factors as:
 - a) The necessity for certain costs,
 - b) The reasonableness of amounts estimated for the necessary costs,
 - c) Allowances for contingencies, and
 - d) The basis used for allocations of particular overhead costs to the proposed contract;
- c) When the necessary data is available, compare the contractor’s estimated cost with:
 - a) Actual costs previously incurred by the contractor,
 - b) The contractor’s last prior cost estimate for the same or similar estimates,
 - c) Current cost estimates from other possible sources, and
 - d) Prior estimates or historical costs of other contractors manufacturing the same or similar items;
- d) Forecasting future trends in costs from historical experience:
 - a) In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends,
 - b) In cases involving recently developed, complex, equipment, even in periods of relative stability, trend analysis of basic labor and materials costs

should be undertaken.

In performing a cost analysis, there are three questions that should be asked in the examination of costs, particularly those in the overhead area:

Is the cost allowable in accordance with guidelines in Part 31 of the Federal Acquisition Regulations (FAR) and OMB Circular A-87;
Is the cost allocable to the particular project; and
Is the cost reasonable?

p) **Basis of Award**

A proposal evaluation team shall be assembled. The team must include at least three members familiar with the requirements of the solicitation. The requesting department should be a member of this team. Detailed evaluation criteria must be developed prior to the receipt of proposals. The proposal review team must use the detailed criteria in order to determine the successful proposal. The criteria used must support the criteria listed in the solicitation as the basis of award.

The Contracting Officer, whom shall chair the review committee, tallies the evaluation results. All members of the team shall complete and sign evaluation sheets recording the results of their evaluation. The Contracting Officer shall have all members complete a conflict of interest form to insure that no conflict of interest exists between the evaluators and the contractors being evaluated.

After evaluations of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal most advantageous to the City, price and other factors considered.

Contracts shall be awarded to responsible and responsive contractors who possess the ability to perform successfully under the Terms and Conditions of the proposed procurement action. As is the case with procurements made by competitive bid, consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other technical resources.

Section 5.02 Best Value

The City can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

Article VI. Invitations for Bid

a) IFB

Prior to initiating a formal procurement action, the Contracting Officer shall review the Purchase Requisition and insure that the requisition adequately describes the goods or services being procured and that an Independent Estimate has been obtained. The Contracting Officer shall also review the requisition to insure that it contains the proper approvals.

Invitations for Bid (IFBs) consist of a number of provisions, some of which are general depending on the type of solicitation and some of which are project specific. In general, the department initiating the procurement prepares project specific provisions of an IFB and the Contracting Officer prepares the general provisions. The Contracting Officer is ultimately responsible for assembly of the IFB and ensuring that it meets all procurement policies and is consistent with all applicable federal, State and local procurement rules and regulations.

Examples of some of the project specific provisions of an IFB include:

- a) Contract specifications, which describe requirements for the supplies, equipment, construction or services to be delivered under the terms of the contract. It indicates to prospective contractors precisely what the City requires.
- b) The specifications also establish the procedures by which it will be determined that all requirements of the contract have been met.
- c) Design specifications, which describe in detail the data necessary to produce an item such as the size and dimensions, physical characteristics, quality test, etc.
- d) Performance specifications, which express the desired performance characteristics in terms of output, function or operation of items and equipment.
- e) Public Works license requirements, bonding requirements, insurance requirements, and add / delete quantities.

(NOTE: Combinations of the above are also used to meet the requirements of a purchase transaction. The exact combination of specifications should be fashioned to meet the needs of each purchase.)

- f) A statement of work, which defines the work required of a contractor, either to develop the equipment being delivered to satisfy the prime mission of FAX, or to compliment the procured items being delivered, or to provide services being procured without a portion of the total procurement being delivered.

The basic distinction between the specification and the statement of work is that the specification defines minimum standards of the item to be procured, while the statement of work defines minimum work to be accomplished by the contractor under the contract.

IFBs shall be worded as precisely as possible. Ambiguous or incomplete specifications can result in unnecessary delays and costly errors. Special care must be taken to ensure that the specifications are not exclusionary or overly restrictive. No discussions are allowed during the bidding process.

The specification 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. When it is impractical or uneconomical for the department initiating the procurement to make a precise description of the technical requirements of the buy, a "brand name or approved equal" description may be used in solicitations.

b) Advertising

The department initiating the procurement shall develop a list of prospective bidders and include those recommendations on the Purchase Requisition. In addition the Contracting Officer shall maintain a file of bidders interested in particular types of contracts. Prospective contractors shall possess the ability to perform successfully, a good record of past performance, integrity, adequate financial and technical resources, and any other factors relevant to the specific item being contracted.

The bidders list shall be developed with consideration of the City's DBE program.

As a goal, the City will attempt to provide at least 14 days for standard procurements and not less than 28 calendar days when procuring non-standard items.

At least three financially and technically qualified prospective bidders shall be notified, if possible. Pre-invitation notices may be furnished to a sufficient number of prospective bidders so as to elicit adequate competition as stated in the RFB, RFI, and RFQ etc.

Notices inviting bids shall be published at least once in a newspaper of general circulation at least ten (10) days prior to bid opening and may be published in trade journals and magazines as deemed necessary or appropriate.

A pre-bid conference may be used as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Attendance by potential bidders may be mandatory if their attendance is essential to understanding the solicitations requirements, or voluntary if responsive bids can be received without the conference.

If after issuance of invitations for bids, but before the time set for opening of bids it becomes necessary to make changes in quantities, specifications, delivery

schedules, opening dates, etc. or to correct or clarify a defective or ambiguous invitation, such changes shall be accomplished by issuance, in writing, of an amendment to the Invitation For Bids. The amendment shall be sent to each prospective bidder to whom the Invitation For Bids has been furnished.

Each amendment issued during an Invitation For Bid shall:

- a) Be serially numbered and dated.
- b) Include the number, date and a description of the original Invitation For Bids concerned.
- c) Clearly state the changes made in the Invitation For Bids and the extension of the opening date, if any.
- d) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect or failure to acknowledge and return the amendment.
- e) Before issuing an amendment to an Invitation For Bids, the City will take into consideration the period of time remaining until the time set for opening and the need for extending the time set of opening must be considered. Where only a short time remains before the time set for opening, consideration shall be given to notifying bidders of an extension of time by fax or telephone. Such notification should be confirmed in the amendment.
- f) Any information given to a prospective bidder concerning an Invitation For Bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation. If such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders no award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

c) Bid Cancellation

Invitations For Bids shall not be canceled unless cancellation is clearly in the City's interest (e.g., where there is no longer a requirement for the material or service, or where amendments to the invitation would be of such magnitude that a new invitation is desirable). When an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

The notice of cancellation shall identify the Invitation For Bids; briefly explain the reason the invitation is being canceled; and where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any further requirements for the type of material or service involved.

If the Invitation For Bids is canceled before the time for bid openings, this fact shall be recorded in the file, with a statement of the number of concerns invited to bid and the number of bids received. The Purchasing Manager or designee shall be authorized to cancel bids.

Bids shall be submitted so as to be received in the office designated in the

Invitation For Bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at the Purchasing office is the time/date stamp which shall be placed on the bid wrapper immediately upon receipt.. The timeliness of bids is the sole responsibility of the bidder.

d) Withdrawal of Bids

Any Bidder may withdraw their bid, either personally, by e-mail, or by written request, received by the City, at any time prior to the time fixed for the receipt of the bids; by contacting the Purchasing Unit. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn after bid opening.

e) Bid Opening

All bids received prior to the time set for opening shall be recorded and kept unopened and secured in a safe place.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to City employees who have the proper need for such information. When bids are submitted, they shall be handled with sufficient care to prevent disclosure of their characteristics before bid opening.

Unidentified bids may be opened solely for the purpose of identification and then only by an authorized official of the City. If a sealed bid is opened by mistake or for purposes of identification, the official shall immediately write on the envelope an explanation of the opening, the date and time opened, the Invitation For Bid number and their signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

The Contracting Officer in charge of the solicitation shall decide when the time set for bid opening has arrived and shall so declare to those present.

All bids received at the time set for receipt shall be publicly opened, and when practical, read aloud by the Contracting Officer to the persons present. The bids received shall be recorded. If it is impractical to read the entire bid, as where many items are involved, the total amount of the bid shall be read if feasible.

A second City employee shall be present to witness the opening and reading of the bids to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified.

Performance of the bid opening procedure may be delegated to an assistant, but the Contracting Officer remains fully responsible for the actions of such assistant.

Examination and evaluation of original bids by other interested individuals may be

made only under the immediate supervision of the Contracting Officer in charge of the solicitation (or his/her designee) and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration in the bids. Copies may be distributed to interested FAX officials for evaluation.

The original bid form shall not be allowed to pass out of the hands of the Contracting Officer or his/her designee. A copy of each bid must be maintained in FAX's procurement files in lieu of such originals for the interim period.

All bids, including attachments and envelopes, shall be retained for the official files.

f) Recording of Bids

The Invitation For Bid number, bid opening dates and time, general description of the procurement item, names of bidders, prices bid and any other information required for bid evaluation, shall be entered on the official record of abstract form and shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date and time, general description of the procurement items, and the total price bid where definite quantities are involved.

The official record or abstract shall be completed as soon as practical after bids have been opened and read aloud. The Contracting Officer in charge of the solicitation and a second employee shall certify the accuracy of the record. The Purchasing Department shall be responsible for maintaining files for these records.

The file of the Invitation For Bids shall show the distribution, which was made and the date thereof. The names and addresses of prospective bidders requesting the Invitation For Bids who were not included on the original solicitation list shall be added and made a part of the record.

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation For Bids. Award shall be made to the bidder submitting the lowest bid, unless the City determines that the bid is not responsive and/or the bidder is found to be not responsible. Award may be made on a line item level or on a bottom line bases taking into consideration the administrative costs. The Bid shall contain a statement regarding the City's rights to make award based on the line items or lump sum.

g) Bid Evaluation

If less than three bids have been received, the Contracting Officer may examine the reasons for the small number of bids received. This examination may include calling potential bidders who did not respond to the solicitation to see if there were restrictive provisions in the bid documents, or if any other element of free and open competition was lacking. A price or cost analysis shall be performed to establish the reasonableness of the bid price before an award is made.

A price or cost analysis shall be used to determine the reasonableness of the bid

price.

The Contracting Officer shall conduct a price analysis to evaluate a bid price based on adequate price competition. If a valid price analysis cannot be completed, support personnel may be requested to assist with a cost analysis of the bid price.

Price analysis is the process of examining and evaluating a bid price without evaluation of the separate cost elements and proposed profit of the individual prospective supplier whose price is being evaluated. Normally, price analysis may be accomplished through one or more of the following activities:

- a) A comparison of the bid prices.
- b) The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made or differences in such factors as specifications, quantities ordered, time for delivery, etc.);
- c) The use of "yardsticks" (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry;
- d) The comparison of prices set forth in published price lists issued on a competitive basis, published market prices or commodities, and similar indicators, together with discount or rebate arrangements;
- e) The comparison of proposed prices with estimates of cost independently developed by personnel with FAX; or
- f) The comparison of prices paid by others (government or commercial) of the same or similar items to the proposed prices.

If only one bid is received, the sole bidder must cooperate with the City as necessary in order for its bid to be considered for award. A new solicitation of bids may be made if the single bid price appears unreasonable or if no determination is made as to the reasonableness of cost of the single bid.

h) Bid Rejection

Preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is compelling reason to reject all bids and cancel the invitation.

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

As a general rule, after opening, an Invitation For Bids should not be canceled and re-advertised due solely to increased requirements for the items being procured. Award should be made on the Invitation For Bids and the additional quantity should be treated as a new procurement.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal, State, and local procurement regulations. A written determination must be included in the Invitation For Bid file stating that cancellation is in the best interest of the City for reasons such as the following:

- a) Inadequate, ambiguous, or otherwise deficient specifications were cited in the Invitation For Bids;
- b) The supplies or services are no longer required;
- c) The Invitation For Bids did not provide for consideration of all factors of cost to FAX;
- d) Bids received indicate that the needs of FAX can be satisfied by a less expensive item differing from that on which bids were received;
- e) All otherwise acceptable bids received are at unreasonable prices;
- f) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to the City; or
- g) The bids received did not provide adequate competition to ensure reasonable prices. A price or cost analysis shall be used to establish the reasonableness of price.

The City may reject bids received and proceed to purchase supplies, equipment or materials in the open market without further observance of the provisions regarding contracts, bids or notice if it is determined that the supplies, equipment or materials may be purchased at a lower price in the open market. Such an action must be approved by City Council if the purchase amount exceeds the Formal Bid limit approval threshold. For lesser amounts, the Director of Transportation's approval is required.

If administrative difficulties are encountered after bid opening which may delay award beyond bidder's 60 day acceptance periods, all bidders shall be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if necessary) in order to avoid the need for a re-advertisement.

When it is determined to reject all bids, the Purchasing Unit shall notify each bidder that all bids have been rejected and stating the reason for such action.

Normally, any bid which fails to conform to the essential requirements of the Invitation For Bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.

A bid shall be rejected where the bidder imposes conditions, which modify requirements of the Invitation For Bids. For example, bids may be rejected in which the bidder:

- h) Attempts to protect themselves against future changes in conditions such as increased costs, if a total price to FAX cannot be determined for bid evaluation;
- i) Fails to state a price and in lieu thereof states that price shall be

“price in effect at the time of delivery”;

- j) States a price but qualifies such price as being subject to “price in effect at time of delivery”;
- k) Where not authorized by the Invitation For Bid, conditions or qualifies his/her bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received or does not receive award under a separate procurement.
- l) Limits rights of the City under any contract clause;
- m) Fails to meet DBE requirements;
- n) Modifies the bid documents;
- o) Fails to list subcontractors on public works bids when the subcontracted work exceeds ½ of 1 percent;
- p) Fails to comply with all of the requirements of the IFB.

Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.

Low bids received from firms determined to be not responsible pursuant to Federal, State or local procurement regulations shall be rejected.

A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the Invitation For Bids.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.

After submitting a bid, if a bidder transfers all of his/her assets or that part of his/her assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus the City may reject the bid.

i) Award

Unless all bids are rejected, Council shall make award by written notice, within the time for acceptance specified in the bid or extension thereof, to the lowest responsible and responsive bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is the lowest. Payment discounts will only be used when history determines that the discount is likely to be earned.

When an award decision has been made, notification shall be made by mailing all bidders of a notice of intent to award naming the selected bidder. The Notice of Intent to Award shall officially start the protest period. If no protest is received within the protest period, then a Notice of Award shall be sent to the selected contractor along with all contract documents. The successful bidder shall complete and execute the contract documents, and provide proof of insurance and /or bonding to the City within the time specified. The City will finalize the execution of the contract and send a copy to the successful bidder.

Article VII. Other Procurement Methods

Section 7.01 Request for Qualifications/ A&E Proposals

Competitive Negotiations procedures are to be followed with the exception of the deviations stated herein. FTA Circular 4220.1F and Government Code 4526 requires that FAX use competitive negotiation procedures for qualification-based procurement of architectural and engineering (“A/E”) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Price is not used as a factor in determining the most qualified proposer.

Following this method, competitor’s qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Under this method, the competitors meeting the minimum requirements of the solicitation are ranked. The highest ranked proposer is then invited to enter into negotiations. The objective of the negotiations is to agree on a fair and reasonable price for the proposed work. The Independent Cost Estimate supported by a price or cost analysis will determine the basis of the pricing target for FAX. FAX may require an audit of the contractor’s proposal prior to final payment.

The steps to be used for proposal evaluation and contract negotiations for A/E contractors are as follows:

- a) The Evaluation team is assigned by the Contracting Officer after consultation with the using Department and/or Transportation Director to review eligible firms and all responses to RFP;
- b) The Team evaluates the firms based on criteria such as:
 - a) Professional qualifications for performance of the required services,
 - b) Specialized experience and technical competence in the type work required,
 - c) Capacity to accomplish the work in the required time,
 - d) Past performance in terms of cost control, quality of work and compliance with performance schedules;
- c) The Evaluation team may hold discussions with the most highly qualified firms (“short list”) to obtain clarity on particular aspects of their proposal;
- d) The Evaluation team prepares a selection report for the Contracting Officer recommending, in ranked order, those firms that are considered to be the most highly qualified to perform the required services;
- e) The Contracting Officer shall make the final selection from a list of the most highly qualified firms prepared by the evaluation team;
- f) After the final selection has taken place, the Contracting Officer may release information identifying the rankings and the firm with whom negotiations will be attempted. If negotiations are terminated without awarding a contract to the highest rated firm, FAX may release information that negotiations will take place

- with the next highest rated firm. Notice shall be provided to firms when negotiations have been terminated;
- g) The final selection authority authorizes negotiations to begin with the most qualified firm, which includes fees and cost estimates;
 - h) The negotiation of compensation to the contractor should represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment;
 - i) In determining the amount of compensation and the method of payment, consideration shall be given to:
 - a) Scope and complexity of designs, surveys and other work and the skills necessary for these services,
 - b) Quality and quantity of data provided to the A/E by FAX,
 - c) Location of, and conditions under which, the services will be performed,
 - d) Date services to begin and time allowed for performance;
 - j) Costs should be negotiated taking into consideration:
 - a) Direct labor,
 - b) Overhead,
 - c) General and administrative expenses,
 - d) Materials,
 - e) Other direct costs, and
 - f) Profit, which is further influenced by:
 - g) Degree of A/E's risk, ii. Level of effort,
 - h) Level of talent or expertise the A/E must furnish iv. Amount of subcontracting,
 - i) Amount of top level A/E management involved, vi. Subcontracts, and
 - j) Contractors investment;
 - k) When the contract is negotiated and signed, the negotiations are documented and placed in the file;
 - l) The contract shall be monitored to ensure that expenditures and payments therefore are commensurate with performance and that both have met all the terms of the contract; and
 - m) The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to the City for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.

Section 7.02 Non-Competitive Procurements

Federal regulations require that one or more of the following conditions are present for Non-Competitive Procurements (Sole or Single Source):

- a) There is a public exigency or emergency that does not allow time for competitive negotiation.
- b) The Federal Transit Administration (FTA) authorizes a non-competitive negotiation.
- c) The item(s) are available only from a single source, as a matter of fact and

not as a matter of preference or convenience.

d) The economic and operational circumstances create a situation where competition will not be effective or efficient for FAX.

e) After solicitation of a number of sources, competition is determined to be inadequate.

f) A contract amendment or change order is needed that is not within the scope of the original contract.

A written Sole or Single Source Justification shall accompany any Non-Competitive procurement transaction that would otherwise require competition.

Section 7.03 Cost Plus Percentage of Cost

Cost plus a percentage of the costs of a contract is a prohibited contract action under federal guidelines.

Section 7.04 Revenue Contracts

A revenue contract is a contract FAX or FAX's subrecipient in which FAX or the subrecipient provides access to public transportation assets either to produce revenues in connection with a public transportation related activity, or to create business opportunities with the use of an FTA assisted property. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. FTA provides the recipient broad latitude in determining the extent and type of competition appropriate for a particular revenue contract.

FAX can use the RFP, cooperative purchasing, or bidding methods delineated in this procedure to satisfy that requirement if multiple competitors may be interested in the opportunity.

Section 7.05 Cooperative Purchases/Piggybacking

The FTA encourages grantees to search federal surplus catalogues in order to avoid purchasing new items, which may exist in the government's surplus inventory.

By California State legislation, the Department of General Services, State Office of Procurement, may act as the buying agent for political subdivisions of the state. The purpose of the State Cooperative Purchase Program is to enable government entities to take advantage of discount prices available through volume purchases.

The City may enter into cooperative purchasing agreements with other governmental agencies. When FTA funds are utilized for non-state cooperative purchases, the City must comply with piggybacking rules and regulations promulgated by the FTA. In particular, FAX estimated quantities must have been contemplated in the original award agreement and the contract must contain an assignment clause that authorizes assignment of contractual rights to the City.

Improperly Expanded Scope.

FAX may not use Federal assistance to acquire property or services through another contract whose scope has been improperly expanded. FTA believes it is extremely important that the recipient ensure that it contracts only for its reasonably anticipated needs and does not add quantities or options to contracts solely to allow it to assign those quantities or options at a later date.

Improperly Expanded Quantity

FAX may not expand the quantity of property or services to be delivered under its contract beyond the scope of the contract's limits solely to assign those contract rights to another entity.

Please refer to the FTA Best Practices Procurement Manual for the latest piggybacking checklist to be included with the file documentation of a procurement action that uses an existing cooperative agreement other than one issued by the State of California.

Article VIII. Responsive and Responsibility Determinations

Responsiveness Determination:

Before awarding the contract, Purchasing shall determine those bidders that are responsive to the minimum requirements of the solicitation. A responsive bidder is one that, at a minimum:

- a) Submits products or services responsive to the RFP/Bid requirements; and
- b) Submits all required certifications and representations; and
- c) Submits a RFP/Bid and other required documents by the due date; and
- d) Complies with all Insurance and Bonding Requirements; and
- e) Otherwise complies with all RFP/Bid instructions

Responsible Bidder Evaluation:

Before awarding the contract, the Purchasing Unit shall determine that a prospective contractor is responsible and the prices are reasonable. A responsible prospective contractor is one who meets the standards forth below:

- a) Has adequate financial resources, or the ability to obtain such resources as required during the performance of the contract;
- b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental;
- c) Has a satisfactory record of performance. Contractors who are, or have been, seriously deficient in current or recent contract performance.
- d) Has a satisfactory record of integrity and business ethics;
- e) Is otherwise qualified and eligible to receive an award under applicable laws and regulations;
- f) Has the necessary organizational, experience, operational controls; and technical skills, or the ability to obtain them; or
- g) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

The Responsible determination shall be addressed in the Procurement History file documentation.

Article IX. Contract Types

Contracts are divided into specific types of compensation arrangements. The following list includes the most commonly used compensation arrangements. It is up to the Contracting Officer to decide which compensation arrangement is most appropriate for a specific procurement.

Section 9.01 Fixed Price

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. This type of arrangement should be used for commercial items where competition is present and reasonable estimates of costs may be obtained.

Fixed-price incentive

This type of arrangement is similar to a Firm Fixed Price contract but it is characterized by an adjustment formula in the contract, which relates to the efficiency of the contractor. A target profit and target cost is negotiated, along with a profit formula. The contractor's profit increases or decreases according to the formula, as the actual costs are less or more, respectively, than the target cost. The fixed-price incentive arrangement is distinguished from the cost incentive arrangement by the inclusion of a ceiling price. Costs in excess of the ceiling price are borne entirely by the contractor.

Fixed-price with price re-determination

This is essentially a Fixed Price arrangement with adjustments within specified limits negotiated, as actual costs become known. As in fixed-price escalation arrangements, FAX assumes the risk of contingencies, which may occur. The price re-determination may be made either at specified times during performance or after completion of performance. This type of arrangement should be used in limited instances only.

Section 9.02 Cost Type

A cost-reimbursement contract may be used only when:

- a) The contractor's accounting system is adequate for determining costs applicable to the contract; and
- b) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

The contractor is reimbursed for costs only and receives no fee. This type of

contract is used for facilities contracts, and research and development contracts with non-profit organizations.

Cost-sharing

The contractor receives no fee and is reimbursed for only a portion of his/her costs. This type of contract is used where the benefits of a research and development contract accrue to both parties.

Cost-plus-incentive-fee

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type is used to place incentives on certain performance areas where the benefits justify the expenditure.

Cost-plus-a-fixed-fee

The contractor receives a set fee negotiated at the inception of the contract and is reimbursed for all costs allowable under established cost principles. This type of contract is used when research and developmental work is required and the contractor shares some responsibility for the proposed cost of the work effort.

Time-and-materials / labor-hour

These are contracts provided for supplies or services on the basis of direct-labor hours at specified fixed hourly rates and materials at cost. This type of contract should be used with caution. It is the least preferred method of contracting.

If this contracting method is used, the contract must include a ceiling that the contractor exceeds at their own risk. Also, the Contracting Officer must document their determination that no other contract type is suitable.

Article X. Cost and Price Analysis

The Contracting Officer is responsible for insuring that every procurement action is supported by a documented price and / or cost analysis. Price analysis is required for all purchases. The degree of analysis will vary based on the proposed price and complexity of the goods or services being procured. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.).

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

Independent Cost Estimates (ICE)

All requisitions must be supported by an Independent Cost Estimate prior to the receipt of bids, quotes, or proposals. The requesting department, with support from the Contracting Officer, is responsible for developing the estimate. An Independent Cost Estimate means that the estimate is derived from sources other than a prospective bidder or proposer. Independent Cost Estimates can vary depending on the complexity of the procurement action. For relatively simple procurement actions the Independent Cost Estimate can be derived from historical pricing, knowledge of the person requesting the procurement, or from other readily available information from reliable Internet sources.

For procurement actions that are fairly complex, estimating assumptions from sources familiar with the technical complexity of the contemplated procurement action should support the Independent Cost Estimate. In some cases it may be necessary to hire technical expertise to help with an accurate Independent Cost Estimate. All Independent Cost Estimates will be included with the requisition.

Price analysis

Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

The City may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

a) Comparison of proposed prices received in response to the solicitation.

Normally, adequate price competition establishes price reasonableness;

b) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or

similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established;

- c) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry;
- d) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements;
- e) Comparison of proposed prices with independent FAX cost estimates;
- f) Comparison of proposed prices with prices obtained through market research for the same or similar items; and
- g) Analysis of pricing information provided by the offeror.

The first two techniques are the preferred techniques. However, if the Contracting Officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the Contracting Officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

Value analysis can give insight into the relative worth of a product and the City may use it in conjunction with the price analysis techniques listed in this section.

Cost analysis

Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

The City may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

- a) Verification of cost or pricing data and evaluation of cost elements, including
 - a) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies,
 - b) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data,
 - c) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships, and
 - d) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors;
- b) Evaluating the effect of the offeror's current practices on future costs.

In conducting this evaluation, the Contracting Officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the Contracting Officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability;

- c) Comparison of costs proposed by the offeror for individual cost elements with:
 - a) Actual costs previously incurred by the same offeror,
 - b) Previous cost estimates from the offeror or from other offerors for the same or similar items,
 - c) Other cost estimates received in response to the FAX's request,
 - d) Independent Government cost estimates by technical personnel, and
 - e) Forecasts of planned expenditures;
- d) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31;
- e) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the Contracting Officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data;
- f) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

Article XI. Contract Financing

Section 11.01 Advance Payments

FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

Section 11.02 Progress Payments

FAX may use progress payments provided the following requirements are followed:

- a) Progress payments are only made to the contractor for costs incurred in the performance of the contract;
- b) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

Upon receipt, the packing slip is compared to the goods received. A visual inspection of the items received is then conducted. If the items are acceptable by receiving personnel, the packing slip is signed and dated. The items received, date received, packing slip number, and back order quantities are to be noted in the record keeping system. These documents will then be sent to the Finance Department and will constitute approval to pay as received.

The Project Manager or FAX technical representative is responsible for the receipt of services, upon completion, the Project Manager or technical representative will sign all documents that confirm the proper completion of services performed and forward the receiving document to the Finance Department to constitute approval to pay as received.

Section 11.03 Milestone Payments

Milestone payments can be made for progress that represents a percentage of the total cost of a particular item to be delivered. Milestone payments are typical for buses, which have a significant capital cost associated with their production. This payment method should only be considered if the period of performance for the manufactured item is in excess of 6 months.

Section 11.04 Liquidated Damages

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

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time, and the rate must be specified in the contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise. Other yardsticks may be used to assess damages as long as the measurement is clear and unambiguous. Liquidated damages are not to be used as a penalty, or to coerce performance of any contractual provision.

Article XII. Federal Provisions

Section 12.01 Contract Clauses

A number of general contract provisions are required by the Federal Transit Administration (FTA) for FTA funded contracts. These provisions are intended to establish minimum guidelines to which FAX must adhere when purchasing supplies, equipment, services, construction and professional services. The provisions and the types of contracts to which they apply are described in the FTA Best Practice Procurement Manual.

These requirements change from time to time. When drafting a contract, therefore, check the latest materials from FTA.

FTA Federal Provision Procurement Matrix					
Provision	Type of Good/Service				
	Professional Services/A&E	Operations/Management	Rolling Stock Purchase	Construction	Materials & Supplies
SEISMIC SAFETY	A&E for new buildings & additions			New buildings & additions	
TERMINATION	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
LOBBYING RESTRICTIONS	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
VIOLATION AND BREACH OF CONTRACT	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
GOVERNMENT-WIDE DEBARMENT AND SUSPENSION	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
ACCESS TO RECORDS AND REPORTS	All	All	All	All	All
CHANGES TO FEDERAL REQUIREMENTS	All	All	All	All	All

NTS					
CIVIL RIGHTS LAWS AND REGULATIONS	All	All	All	All	All
DISADVANTAGED BUSINESS ENTERPRISE (DBE)	All	All	All	All	All
ENERGY CONSERVATION	All	All	All	All	All
INCORPORATION OF FTA TERMS	All	All	All	All	All
NO GOVERNMENT OBLIGATION TO THIRD PARTIES	All	All	All	All	All
PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS	All	All	All	All	All
SAFE OPERATION OF MOTOR VEHICLES	All	All	All	All	All
FLY AMERICA	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel
PATENT RIGHTS AND RIGHTS IN DATA	R&D				
EMPLOYEE PROTECTIONS		>\$100,000	>\$100,000	>\$2,000	>\$100,000
BUY AMERICA REQUIREMENTS			>\$150,000	>\$150,000	>\$150,000
RECYCLED PRODUCTS		EPA selected items >\$10,000 annually		EPA selected items >\$10,000	EPA selected items >\$10,000 annually

				annually	
CARGO PREFERENCE REQUIREMENTS			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
BONDING REQUIREMENTS				>\$150,000	
BUS TESTING			All		
CHARTER SERVICE			All		
PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES			All		
PUBLIC TRANSPORTATION EMPLOYEE PROTECTIVE ARRANGEMENT		Transit operations			
SCHOOL BUS OPERATIONS			All		
SUBSTANCE ABUSE REQUIREMENTS			Transit operations		

Disputes

Construction Claims shall be resolved utilizing the procedures contained in the Public Contract Code for amounts in excess of \$375,000. For lesser amounts, the City may decide to establish a contract disputes board where members of the three-panel dispute board arrive at a recommendation. Each party selects a member to the board and mutually agrees to the third member. The results of the disputes resolution board may be binding on each party by stipulation.

Other contract disputes are to be resolved by the Contracting Officer within their delegated authority level. Ultimately, the City Council, in consultation with the administrative staff, will resolve administrative disputes that may involve contract actions.

The FTA shall be notified of all claims in accordance with Grant Management Guidelines contained in OMB Circular 5010.

Contractor prequalification

Prequalification lists may be used for recurring requirements for property that take a good deal of time to evaluate to determine if they satisfy the recipient's standards. Purchasing may prequalify people, firms, or products for participation in its procurements provided that:

Lists. FAX ensures that all its prequalification lists used in acquiring property and services are current.

Sources. FAX ensures that all its prequalification lists include enough qualified sources to ensure maximum full and open competition.

Qualification Periods. FAX permits potential bidders or proposers to qualify during the solicitation period (from the issuance of the solicitation to its closing date), as set forth in the Common Grant Rule for governmental recipients. Evaluations for prequalification, however, need not be accelerated or truncated. FTA does not require a recipient to hold a particular solicitation open to accommodate a potential bidder or proposer that submits a person, firm, or product for approval before or during that solicitation. Prequalification as discussed here should not be confused with reviews of technical qualifications that are an essential step in two-step procurement processes.

Rolling stock

In acquiring rolling stock, FAX shall utilize the following:

Method of acquisition

In compliance with 49 U.S.C. § 5325(f), any third party contract award for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

Multi- year options

In accordance with 49 U.S.C. § 5325(e)(1), a procurement for rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not consist of a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts. This means FAX shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options.

Pre- award and post- delivery requirements

FAX will comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations.

Bus testing

To the extent applicable, FAX must comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, “Bus Testing,” 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

Debarment and suspension

The provisions of 49 CFR Part 29 apply to all Federally Funded FAX contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services.

FAX, its contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

FAX, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Lobbying

Recipients of FTA grants and certain third party contractors and subcontractors are required to certify that Federal dollars are not being used to influence Congressional activities in connection with the award of a grant, loan, or contract and must report any Non-Federal moneys used for these activities. The requirement applies to any contractors or subcontractors receiving more than \$100,000 in an FTA funded contract. Standard certification language will be required in all responses to RFPs and IFBs as will disclosure of lobbying activities on the Standard form LLL “Disclosures Form to Report Lobbying”.

Notification requirement

With respect to any procurement for goods and services (including construction services) having an aggregate value of \$500,000 or more FAX will:

- a) Specify in any announcement of the awarding of the contract for such goods or services the amount of Federal funds that will be used to finance the acquisition; and
- b) Express the amount as a percentage of the total costs of the planned acquisition.

Bonding requirements for construction activities exceeding \$100,000

- a) Construction Activities: Bid guarantee, contract performance, and payment bonding will be required by FAX to the extent deemed adequate by FTA and applicable Federal regulations, and comply with any other bonding requirements FTA may issue;
- b) Other Activities: FAX will comply with any other bonding requirements or restrictions FTA may impose.

Seismic safety

FAX will comply with the requirements of US DOT regulations at 49 C.F.R. Part 41, Executive order No 12699, "Seismic Safety of Federal and Federally- Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, pursuant to the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S .C. 7701 et seq., (specifically, 49 C.F.R. 41.117), pertaining to seismic safety requirements for US DOT assisted construction projects, and with any implementing guidelines FTA may use.

Employee protection

FAX will comply as mandated by the FTA Master Agreement Section 24 and with any implementing guidelines FTA may use.

Charter services operations

Neither FAX nor any transit operator performing work in connection with any Project will engage in charter service operations, except as permitted by 49 U.S.C. 5323 (d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any amendments thereto that may be issued. Any charter service agreements required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

School transportation operations

Neither FAX nor any transit operator performing work in connection with any Project will engage in school operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as permitted by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

Substance and alcohol testing

FAX shall ensure that any entity performing a safety- sensitive function on its behalf, implements and certifies compliance with FTA regulations pertaining to drug and alcohol abuse as required by 49 CFR Parts 653 and 654. Covered contractors shall be required to establish, implement and produce documentation necessary to establish compliance with parts 653 and 654 and to certify compliance under all

reporting requirements of the FTA.

Evaluation of options

An option is a unilateral right to purchase more goods or services at specified terms. When the option includes additional compensation to the contractor, the additional prices must be evaluated as a part of the original contract award or the exercise of the option becomes a sole-source contract under FTA regulations. The costs for sole-source awards must be evaluated utilizing a cost analysis or other applicable market pricing.

Exercise of options

The Contracting Officer must ensure that the exercise of an option is in accordance with the Terms and Conditions of the option stated in the initial contract awarded.

An option may not be exercised unless the Contracting Officer has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

Contract change orders and modifications

A Contract Change Order is a change within the general scope of the original contract. The Contracting Officer, or designee shall describe the changed terms of the contract, making reference to the existing language in the contract and the changes being made to that language. The Contracting Officer, or designee may use the terms, "was" and "is" to reflect the impact of the change. Schedule changes shall be implemented in accordance with contractual provisions. All contract changes must be supported by adequate consideration.

The Contracting Officer, or designee shall make every attempt to agree on the price of the change order prior to directing the work. This may not be possible in some cases like that of construction contracts where any delay in making the change may have the potential of increasing the overall cost of the project.

In cases where a change is directed prior to agreement on the price the Contracting Officer, or designee shall request cost and pricing data from the contractor in order to reach agreement on the price of the change order. Where negotiations are held with the contractor, a negotiations memorandum shall be documented indicating the initial negotiations positions of the parties, the substantiation for those positions, and migration from the respective positions toward agreement on a price.

The negotiation memorandum shall indicate the degree to which the FAX negotiators relied on additional documentation provided by the contractor. The memorandum shall identify the additional documentation relied upon by FAX. Failure to agree on a price may result in a contractual dispute.

Where the contractor is required to submit cost data to substantiate any price increases or decreases, the Contracting Officer shall perform a Cost Analysis.

Change Orders shall be approved by the authorized FAX approving official and signed by both parties.

Modifications that are not within the general scope of the contract are to be handled as non-competitive proposals and subject to a cost analysis.

Change orders and modifications are to be sequentially numbered in a form approved by FAX Counsel.

Section 12.02 Buy America

The Buy America requirements are located at 49 U.S.C. 5323(j) and (m) and 49 CFR 661 and 663. As now stipulated, any steel, cement, and manufactured products used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

- a) Applying this provision would be inconsistent with the public interest;
- b) The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for the project;
- c) Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than 60 percent for FY2016 and FY2017, more than 65% for FY2018 and FY2019, and more than 70% for FY2020 and beyond, of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States; or
- d) Including domestically produced material will increase the purchase cost of rolling stock by more 25 percent for the overall project.

(NOTE: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.)

The provisions of §661.11 of this part do not apply when foreign sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.

Section 12.03 Certifications

The Contracting Officer should ensure that the pre-award certifications associated with the above mentioned federal requirements are secured prior to

contract award.

Section 12.04 Unreasonable Requirements

The Contracting Officer shall refrain from using unreasonable or excessive qualifications and requirements that may adversely impact small businesses seeking to do business with FAX.

The Contracting Officer shall only state the minimum necessary experience and bonding requirements to protect FAX's interest and comply with both State and FTA requirements.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements of the property, a "brand name or equal" description may be used as a means to define the performance or other salient characteristics of a specific type of property. The Contracting Officer, however, must state the salient characteristics of the named brand that offerors must provide. When using a "brand name" specification, you need not attempt to reverse-engineer a complicated part to discern precise measurements or specifications in order to describe its salient characteristics. FTA's "Best Practices Procurement Manual," contains guidance on preparation of specifications including examples with specific language.

Section 12.05 Arbitrary Actions

All persons involved in the award, selection, and administration of FAX contracts shall refrain from arbitrary actions, which are defined as actions that are not supported by the business needs of the agency and unnecessarily subjects the affected parties to decisions made without the utilization of objective criteria.

Section 12.06 Local Preferences

The use of geographic preferences on Federal Transit Administration contracts is prohibited. The use of statutorily or administratively imposed, in-State or local, geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference is also prohibited. This requirement does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Section 12.07 Bonding

Unnecessary experience and excessive bonding

The Contracting Officer shall only state the minimum necessary experience and bonding requirements to protect the City's interest and comply with both State and FTA requirements.

For construction contracts the follow the requirements of this procedure relating to bid guarantees, performance bonds, and payment bonds. The Contracting Officer shall secure bonding sufficient to reduce the risk of Non- Performance. FTA may accept the bonding policy of FAX as long as these minimum requirements are met:

- a) a bid guarantee from each bidder equal to 10 percent of the bid price;
- b) a performance bond for 100 percent of the contract price; and
- c) a payment bond on the part of the contractor for 100 percent of the contract price for contracts over \$25,000.

Article XIII. Protests

If FTA funds are involved in the purchase, notice shall be provided to the FTA on receipt of a protest. This notice may be provided by Email to the FTA Regional Administrator.

If a protester is not satisfied with the protest decision made by FAX, and Federal funds are involved, the protester may file protest with the Federal Transit Administration. Review by FTA will be limited to:

- a) Violation of Federal law or regulations;
- b) Violation of FAX's protests procedures described herein, or failure by FAX to review protest.

Protests must be filed with FTA (with a concurrent copy to the City) within five (5) days after the City renders a final decision, or five (5) days after the protester knows, or has reason to know, that it failed to render a final decision. After five (5) days, FAX will confirm with FTA that FTA has not received protest on the contract in question.

FAX shall not be responsible for any protests not filed in a timely manner with FTA.

The Transportation Director or Designee shall respond to all Protests involving FTA funded procurement actions.

Article XIV. Contract Close-Out

The Contracting Officer shall insure that all contractual provisions are enforced and all items of work completed before closing out the purchasing action. This includes required audits and warranty provisions if they are included in the contract.

Article XV. Contract Checklists

Section 15.01	Micro Procurement Documentation
Section 15.02	Small and Formal Procurement History
Section 15.03	Small Procurement File Documentation Checklist
Section 15.04	Formal Procurement File Documentation Checklist
Section 15.05	Piggybacking Checklist
Section 15.06	FTA Mandatory Flow Down Clauses

Section 15.01 *Micro Procurement Documentation*

Micro Purchase Form

Fair and Reasonable Price Determination for Purchases Under \$3,500

Check one or more of the following:

- Price was found reasonable on recent purchases
- Price was obtained from a current price list
- Price was obtained from a current catalog
- Sales price from commercial market advertisement
- Similar price in a related industry
- Personal knowledge of item procured
- Regulated utility
- Other (specify below)

Comments:

Copy of backup documentation is attached

Print Name

Date

Signature

Section 15.02 Small and Formal Procurement History

FAX SMALL AND FORMAL PROCUREMENT HISTORY

Date: Completed by: PO/Contract No: Source of Funding:
Method of Procurement Competitive RFP <input type="checkbox"/> Competitive Bid: <input type="checkbox"/> Small Purchase: <input type="checkbox"/> A&E Services <input type="checkbox"/> e Source: <input type="checkbox"/>
Reason for Non-Competition:
Reason for Procurement:
Contract Type: Rationale for contract type:
Reason for Contractor selection or rejection: Lowest responsive, responsible bidder: Evaluation results were:
Basis for Contract Price: Accepted contractor's proposed pricing: Negotiated Price (attached memorandum): Other:
Cost / Price Analysis: The price offered by the supplier was within % of the independent estimate, and variance between the offerors constituted a range of . The competitive range was determined to be from \$ Pricing discrepancies between the offeror was attributed to : Other sources/data used to affirm price reasonableness were:
<u>Summary of Responsibility and Responsiveness Checks</u> Award Date of contract award: Council Approval Date:
Change Orders Identify each and summarize reason for change, dates, cost analysis, time impact , and modification number:

Section 15.03 Small Procurement File Documentation Checklist

FAX Small Procurement Documentation Checklist

Project Name: _____

Contractor Name: _____ Contract Number: _____

Project/Contract Manager Name: _____

Location of Electronic File: _____

INSTRUCTIONS: The Contracting Officer indicates the content of each procurement file on this list, and places this list in front of the file. Papers will be filed in the order indicated by the item number in the appropriate section Supporting papers will be filed under the applicable item Number. Prepare separate list for Change Orders (COs) whenever volume of documentation warrants.

Document/Requirement	Applicability	Applicable to this Procurement/Required? Y/N	Date Added to File	Tab Number	Completed By (Initial)
Pre-Solicitation Requirements					
Statement of Work, Specification, Work Description	All Procurements			1	
Independent Cost Estimate	All Procurements			2	
Sole Source Justification	For Sole Source Procurements			3	
Purchase Requisition	All New Procurements			4	
Noncompetitive, Emergency, Specialized Equipment Approval	As required			5	
Solicitation Requirements					
RFQ / RFIQ / IFB / RFP/ Addenda	All Procurements			6	
Pre-Solicitation Conference Documentation	As Required for IFB/RFP			7	
Supplier Quotations/Bids/Proposals	All Procurements			8	
Bid Opening and Bid Tabulation Records	As required			9	
Evaluation					
Technical Evaluation of Proposals/Bids/Merit Determination for changes	As required			10	
Cost Analysis/Price Analysis/Waiver of Costs Analysis/Market Analysis	All Procurements			11	
Proposal Evaluation Summary	As required			12	
Responsiveness Determination	All Procurements			13	
Responsible Bidder Determination (may consist of):	All Procurements			14	
Cert. of Federal Restriction on Lobbying	Federally Assisted Procurements > 100,000			14	
Debarment/Suspension	All Procurement actions;			14	

check (SAM.gov)	required print out on procurements > \$25,000				
Code of Conduct Certification	All Procurement Actions			14	
Conflict of Interest Analysis & Certification	All Procurement Actions			14	
DBE (for TVMs plan approval printout, for other procurements include clause)	For procurements with contract DBE Goals and Rolling Stock			14	
Drug & Alcohol Testing & Drug Free Workplace Certifications	All safety sensitive procurement actions			14	
Non Collusion Affidavit	All Construction Procurements			15	
Insurance Evaluation	As required			16	
Qualified Products List	As required			17	
Protest Procedures	As required			18	
Copy of Protest Notification to FTA	As Required			19	
Award					
Notice of Intent to Award	All procurements over \$100,000			20	
Performance and Payment Bond	All Construction procurements over \$100,000; other procurements as required			21	
Contract/ Purchase Order (executed copy)	All Procurements			22	
Unauthorized Procurements					
Ratifications	As required			23	
Contract/P.O. Close-Out					
Invoice Approval/Proof of Delivery	As Applicable			24	
Close-out Audit	As required			26	
Close Out Documentation	All Procurements			27	
Procurement History					
Procurement History Documentation	All procurements over \$3,500			28	
Construction – Davis Bacon					
Certified Payroll & Wage Determinations	As Applicable			29	
Miscellaneous					
Other Documentation – Please List				30	

Section 15.04 Formal Procurement File Documentation Checklist

FAX Formal Procurement Documentation Checklist

Project Name: _____

Contractor Name: _____ Contract Number: _____

Project/Contract Manager Name: _____

Location of Electronic File: _____

INSTRUCTIONS: The Contracting Officer indicates the content of each procurement file on this list, and places this list in front of the file. Papers will be filed in the order indicated by the item number in the appropriate section Supporting papers will be filed under the applicable item Number. Prepare separate list for Change Orders (COs) whenever volume of documentation warrants.

Document/Requirement	Applicability	Applicable to this Procurement/Required? Y/N	Date Added to File	Tab Number	Completed By (Initial)
Pre-Solicitation Requirements					
Statement of Work, Specification, Work Description	All Procurements			1	
Independent Cost Estimate	All Procurements			2	
Sole Source Justification	For Sole Source Procurements			3	
Purchase Requisition	All New Procurements			4	
Noncompetitive, Emergency, Specialized Equipment Approval	As required			5	
Advertisement/Publication	All Formal			6	
Solicitation Requirements					
RFQ / RFIQ / IFB / RFP/ Addenda	All Procurements			7	
Pre-Solicitation Conference Documentation	As Required for IFB/RFP			8	
Supplier Quotations/Bids/Proposals	All Procurements			9	
Bid Opening and Bid Tabulation Records	All Formal			10	
Evaluation					
Technical Evaluation of Proposals/Bids/Merit Determination for changes	As required			11	
Cost Analysis/Price Analysis/Waiver of Costs Analysis/Market Analysis	All Procurements			12	
Audit/Pre-Award Rolling Stock Audit	Rolling Stock Procurements >\$150,000			13	
Proposal Evaluation Summary	All Formal			14	
Responsiveness Determination	All Procurements			15	
Responsible Bidder Determination (may consist of):	All Procurements			16	

Cert. of Federal Restriction on Lobbying	Federally Assisted Procurements > 100,000			16	
Buy America Certification	As Applicable for Federally assisted rolling stock procurements			16	
Debarment/Suspension check (SAM.gov)	All Procurement actions; required print out on procurements > \$25,000			16	
Code of Conduct Certification	All Procurement Actions			16	
Conflict of Interest Analysis & Certification	All Procurement Actions			16	
DBE (for TVMs plan approval printout, for other procurements include clause)	For procurements with contract DBE Goals and Rolling Stock			16	
Drug & Alcohol Testing & Drug Free Workplace Certifications	All safety sensitive procurement actions			16	
Non Collusion Affidavit	All Construction Procurements			17	
Insurance Evaluation	As required			18	
Qualified Products List	As required			19	
Protest Procedures	All Procurements			20	
Copy of Protest Notification to FTA	As Required			21	
Pre-Negotiation Objectives	All Formal Negotiated Procurements			22	
Summary of Negotiations	All Formal Negotiated Procurements			23	
Award					
Notice of Intent to Award	All Formal			24	
Performance and Payment Bond	All Construction procurements over \$100,000; other procurements as required			25	
Contract/ Purchase Order (executed copy)	All Procurements			26	
Unauthorized Procurements					
Ratifications	As required			27	
Contract/P.O. Close-Out					
Invoice Approval/Proof of Delivery	As Applicable			28	
Post Delivery Audits of Rolling Stock	Rolling Stock Procurements; other procurements as required			29	
Close-out Audit	As required			30	
Close Out Documentation	All Procurements			31	
Procurement History					
Procurement History Documentation	All procurements over \$3,500			32	
Construction – Davis Bacon					
Certified Payroll & Wage Determinations	As Applicable			33	
Miscellaneous					
Other Documentation – Please List				34	
Council Approval				35	

Section 15.05 Piggybacking Checklist

Piggybacking Checklist

In order to assist in the performance of your review, to determine if a situation exists where you may be able to participate in the piggybacking (assignment) of an existing agreement, the following considerations are provided. Ensure that your final file includes documentation substantiating your determination.

WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post- Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files. Have you performed a market analysis of the prices to be paid and have you determined the price to be fair and reasonable and in the best interests of the Agency?		
10. If the contract is for rolling stock or replacement parts, does the contract term comply with the five-year term limit established by FTA? See FTA Circular 4220.1F, Chapter IV, 2 (14) (i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they "within the scope" of the contract or are they "cardinal changes"? See BPPM Section 9.2.1.		

Note: This worksheet is based upon the policies and guidance expressed in (a) the FTA Administrator's "Dear Colleague" letter of October 1, 1998, (b) the *Best Practices Procurement Manual*, Section 6.3.3—*Joint Procurements of Rolling Stock and "Piggybacking,"*

Section 15.06 FTA Mandatory Flow Down Clauses

FTA Mandatory Flow Down Clauses 2018*

*Clauses and requirements subject to change, confirm requirements in FTA Master Agreement or the Best Practices Procurement Manual

	Clause Title	Flow down Requirements	In File
1.	Fly America Requirements	The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.	
2.	Veterans Preference	As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.	
3.	Buy America Requirements	Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000).	
4.	Charter Bus and School Bus Requirements	Operational Service Contracts.	
5.	Cargo Preference Requirements	all contracts involving equipment, materials, or commodities which may be transported by ocean vessels	
6.	Seismic Safety Requirements	contracts for the construction of new buildings or additions to existing buildings	
7.	Energy Conservation Requirements	These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.	
8.	Clean Water Requirements	The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000	

9.	Bus Testing	acquisition of Rolling Stock/Turnkey	
10.	Safe Operation of Motor Vehicles	The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts.	
11.	Lobbying	The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant.	
12.	Access to Records and Reports	The record keeping and access requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.	
13.	Federal Changes	applies to all contracts	
14.	Bonding Requirements	These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier that exceed the simplified acquisition threshold.	
15.	Clean Air	The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000	
16.	Recycled Products	apply to all contracts for items designated by the EPA	
17.	Davis-Bacon and Copeland Anti-Kickback Acts	The Acts apply to any construction contract over \$2,000	
18.	Contract Work Hours and Safety Standards Act	any construction contract or non-construction contract to which the Act applies over \$100,000	
19.	Contract Work Hours and Safety Standards Act (Non-Construction)	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000.	
20.	No Government Obligation to Third Parties	Applicable to all contracts	
21.	Program Fraud and False or Fraudulent Statements and Related Acts	Applicable to all contracts	
22.	Termination	all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.	
23.	Government-wide Debarment and Suspension (Non-procurement)	The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000	

24.	Privacy Act	When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.	
25.	Civil Rights Requirements	The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.	
26.	Breaches and Dispute Resolution	All contracts in excess of \$150,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate	
27.	Patent and Rights in Data	The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.	
28.	Transit Employee Protective Agreements	apply to each contract for transit operations	
29.	Disadvantaged Business Enterprises (DBE)	The DBE contracting requirements flow down to all third party contractors and their contracts at every tier.	
30.	Incorporation of Federal Transit Administration (FTA) Terms	applies to all contracts	
31.	Drug and Alcohol Testing	Third party contractors who perform <i>safety-sensitive functions</i> must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, <i>Safety-sensitive function</i> means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors: 1. Operating a revenue service vehicle, including when not in revenue service; 2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License; 3. Controlling dispatch or movement of	

		<p>a revenue service vehicle;</p> <p>4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;</p> <p>5. Carrying a firearm for security purposes.</p> <p>Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."</p>	
32.	Pre-Award and Post-Delivery Audits of Rolling Stock Purchases	Recipients purchasing revenue service rolling stock with FTA funds must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663.	