

Erie Metropolitan Transit Authority Resources and Procurement Policy

March 2024

EMTA Procurement Summary

Unless otherwise required by the Municipal Authorities Act:

- I. **Purchases that do not exceed \$12,600.00 - Options for purchasing:**
 - A. May be obtained without obtaining competitive quotes, if the price is determined to be fair and reasonable. All micro purchases with only one (1) quote must include the " Fair and Reasonable Price Determination" stamp signed, dated, and reason checked off and filed with the procurement.
 - B. At least two telephone quotes may be obtained, and must be documented using the Telephone Quote form, which should include the date, vendor's name, address, phone number, and contact person. In this case, no stamp is needed. The completed telephone quote form must be filed with the procurement.
 - C. Two written quotes may be obtained by fax, mail, or electronic means. If submitted electronically, the quote must be printed. **No stamp is needed if you have at least two written quotes.** Copies of all quotes must be filed with the procurement.
- II. **Purchases that exceed \$12,600.00 , but not more than \$23,200.00:** There are two options for small purchases: you must have at least two written quotes or telephone quotes. Written quotes are required for any purchase in excess of \$23,200.00. **Using the stamp is not acceptable.** Such approval will include a cost or price analysis as outlined in EMTA's procurement policy.
- III. Purchases over \$23,200.00: must be awarded by sealed bid (IFB) or request for proposal (RFP), and must adhere to the formal advertising process.
- IV. No contract will be written for or extended beyond 5 years without a memo to the file that has documented the rationale for the contract length.
- V. Please refer to EMTA's procurement policy for details on purchasing regulations.

Table of Contents

- I. Purpose
- II. Definitions
- III. Ethics/Standards of Conduct
 - A. Personal Conflicts of Interest
 - B. Proper Personal Conduct
 - C. Organizational Conflicts of Interest
 - D. Special Exceptions under FTA 4220.1F, Chapter III
 - E. Issuance of Standards of Conduct
 - F. Sanctions for Violation of Ethics / Standards of Conduct
- IV. Disadvantaged Business Enterprises
- V. General Procurement Practices
 - A. Awards to Responsible Contractors
 - B. Review of Procurement Requests to Avoid Duplicate or Unnecessary Purchases
 - C. Competition; Non-Collusive Bids and Proposals
 - D. Splitting Purchases
 - E. Purchase Orders
 - F. Entering into a Contract
- VI. Methods of Procurement
 - A. Micro-Purchases
 - B. Small Purchases
 - C. Large Purchases
 - 1. General Requirements for All Large Purchases
 - A. Practices Deemed Restrictive of Competition
 - B. Pre-qualification
 - C. Specifications, Plans, and Drawings
 - D. Purchase Description
 - E. Alternate Articles
 - F. Written Record of Procurement History
 - G. Use of Technology/Electronic Commerce
 - 2. Invitation for Bid (IFB)
 - A. Contents of Invitation for Bids
 - B. Methods for Soliciting Invitations for Bids
 - C. Receipt and Safeguarding of Bids
 - D. Opening of Bids
 - E. Recording of Bids
 - F. Award of Bids
 - G. Amendment of Invitation for Bids
 - H. Cancellation of Invitations Before Opening
 - I. Modification or Withdrawal of Bids

- J. Rejection of All Bids
 - K. Rejection of Individual Bids
 - L. Disposition of Late Bids
 - M. Minor Informalities or Irregularities in Bids
 - N. Mistakes in Bids
 - O. Change Order Policy
 - 3. Request for Proposals (RFP)
 - A. Publicizing the Proposal
 - B. Selection Criteria
 - C. Evaluation of Proposals
 - D. Award of Proposals
 - E. Request for Revised Proposals
 - F. Discussions and Clarifications (Negotiations)
 - G. Request for Best and Final Offer
 - H. Award Based on Initial Proposals
 - I. Withdrawal of Proposal
 - J. Debrief Unsuccessful Offerors
 - 4. Two-Step Procurement Procedures
 - A. Review of Technical Qualifications and Approach
 - B. Review of Bids and Proposals Submitted by Qualified Prospective Contractors
 - 5. Architectural and Engineering Services (A&E)
 - 6. Design-Bid-Build
 - 7. Design-Build
 - 8. Procurement by Other than Full and Open Competition
(Noncompetitive Proposals/Sole Source)
 - A. General Guidelines for Other than Full and Open Competition
 - B. Procurement Procedures
 - 9. Awards to Other than the Lowest Bidder.
 - 10. Acquisition of Real Property
 - 11. Leasing Project Property to Another Party
- VII. Protest Procedures
 - A. Pre-award Protests
 - B. Post-award Protests
 - C. Appeals to FTA
- VIII. Contract Administration System
- IX. Contract Clauses
 - A. Required Contract Clauses
 - B. General Contract Clauses (apply to all large purchases)
 - C. Special Contract Clauses and Additional Special Contract Clauses (applied selectively to purchases based on contract type or other variable criteria)

- D. Procuring Equipment or Materials Using Option Clauses
 - 1. Definition of Option Contract
 - 2. FTA Requirements for Option Contracts
 - 3. Piggybacking - Purchasing Options on Other Grantee's Bus Procurements
- X. Contract Guidance
 - A. Maximum Length of Service and/or Supply Contracts
 - B. Purchasing Extended Warranties with Capital Grant Funds
 - C. Payment Provisions in Contracts
 - 1. Using Advance Payments
 - 2. Using Progress Payments
 - A. Progress Payments Based on Costs
 - B. Progress Payments Based on Percentage of Completion
 - 3. Withholding and Final Payment
- XI. Specific Contract Types
 - A. Revenue Contracts
 - B. Time and Materials Type Contracts
- XII. Methods for Performing Cost and Price Analyses
 - A. Cost Analysis
 - 1. When to Perform a Cost Analysis
 - 2. Cost Analysis Process
 - B. Price Analysis
 - C. Profit
 - D. Federal Cost Principles
- XIII. Rental / Leasing in Lieu of Purchase
- XIV. Purchasing / Leasing Buses with FTA Funds (Bus Testing)
- XV. Disposition of Surplus and Scrap
 - A. Premature Withdrawal of Property from Use
 - B. Capital Inventory
 - C. Identification of Surplus and Scrap
 - D. Disposition of Surplus Stock
 - E. Disposition of Scrap
 - F. Specific Procedures for Disposition of Surplus and Scrap

Appendices_

Appendix A: Abstract of Bids

Appendix B: Approval Authority Memorandum

Appendix C: Sample Purchase Order and Stamp

Appendix D: Telephone Quote Form

Appendix E: Method of Procurement Form

Appendix F: Contractor Responsiveness and Responsibility Form

Appendix G: FTA Clauses and Checklist

Appendix H: Piggybacking

Appendix I: Endnotes

I. Purpose

The purpose of these policies and procedures is to establish guidelines relating to the purchase or sale of real and personal property, the granting of concessions, and the making of certain contracts by EMTA, in accordance with U.S. Department of Transportation (U.S. DOT) Federal Transit Administration (FTA) documents, [FTA Circular 4220.IF, 49 C.F.R. 18, Master Agreement (FY 2013), and the Best Practices Procurement Manual (October 2016) including updates]. In practices where there is a conflict between EMTA's procurement policy and actual practice, the highest governing authority shall prevail.

II. Definitions

Abstract of Bids: document used to record the results of sealed bids for each bidder, which is subsequently made available for public inspection, after completion of the bid process.

Best-Value: a selection process in which proposals contain both price and qualitative components, and award is based on a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine (or derive) the offer most advantageous and of the greatest value to EMTA.

Board: will mean the Board of Directors of EMTA.

Cardinal Change: a major deviation from the original purposes of the work or the intended method of achievement, or a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract.

Change Order: an order authorized by EMTA directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor.

Chairman: will mean the Chairman of the Board of Directors of EMTA and will include the Vice-Chairman when the Chairman is unavailable.

Contract Administration: the post award administration of the contract to ensure compliance with the terms of the contract by both the contractor and EMTA.

Contract Administration File Documentation: the documentation contained in the contract file maintained by, or on behalf of, the contract administrator. It reflects the actions taken by the contracting parties in accordance with the requirements of the contract and documents the decisions made, and the rationale therefore, of matters which may result (or have resulted) in controversy or dispute.

Design-Bid-Build Project: a construction project under which a recipient commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for construction, by engaging the services of a contractor through sealed bidding or competitive negotiations to complete delivery of the project.

Design-Build Project' a construction project under which a recipient enters into a contract with a seller, firm, or consortium of firms both for design and construction of a public transportation facility.

Electronic Commerce (E-Commerce): consists of electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web internet technology, electronic bulletin boards, purchase cards, electronic funds transfer, electronic signatures, and electronic data interchange.²

PTA: Federal Transit Administration - an operating administration of the U.S. Department of Transportation.

Joint Procurement: a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum or maximum.

Large Purchase: purchases over \$100,000, may include: Invitation for Bids (IFB), Request for Proposals (RFP), Two-Step Procurement Procedures, Design-Bid-Build, Design-Build, and Architectural and Engineering Services(A&E).³

Local Government: includes a public transit authority as well as county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof.

Micro-Purchase: purchases / contracts that do not exceed \$3,000. May be made with Telephone Quotes.

Noncompetitive Proposals (sole source): procurement only if you can justify not soliciting additional competition in the manner explicitly defined in PTA Circular 4220.1F Chapter VI, h 3i.

Piggybacking is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process. (" PTA Dear Colleague" letter, October 1, 1998).

Purchase: will mean the procurement by purchase, lease, or otherwise of real or personal property by EMTA, and awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to EMTA.

Recipient: means EMTA or any organization receiving funds directly from FTA.

Sale: will mean the sale, lease, or other disposition of any real or personal property by EMTA.

Small Purchase: purchases / contracts between \$3,001 and \$100,000. Fuel purchases between \$3,001 and \$50,000 may be made with telephone quotes. All purchases between \$50,001 and \$100,000 must include written quotes.

Statute of Frauds: Generally, the Statute of Frauds dictates whether contracts should be oral or written. In order to be enforceable, the Statute of Frauds requires certain contracts to be written and signed by the party charged with performing the contract. For example, contracts for the sale of goods in excess of \$500 must be in writing in order to be enforceable. (See Best Practices Procurement Manual, Section 1.2.2 for a list of other instances where Statute of Frauds applies).

Subrecipient: any organization receiving FTA funds from EMTA, but does not include contractors or subcontractors. Sub agreement is the actual agreement between EMTA and the subrecipient.

Telephone Quote: quote for micro-purchases or small purchases obtained by calling a vendor and verbally stating specifications for goods or services in order to solicit a quote.

Documentation for telephone quote must be recorded on " Telephone Quote" form. Telephone quotes are only acceptable for micro-purchases and for small purchases for fuel less than \$50,000.

Third party contract: any purchase order or contract awarded by EMTA to a vendor or contractor using Federal financial assistance awarded by FTA.4

U.S. DOT: United States Department of Transportation.

Written Quote: document submitted by vendor to EMTA in writing via fax, mail, printed catalog price, advertisement, or electronic means. May be used for Micro or Small purchases.

III. Ethics / Standards of Conduct

It is the policy of EMTA to adopt an arm's length relationship in regard to all suppliers, vendors, service companies, and passengers, with whom EMTA may have a relationship as part of its normal daily operations. It is important that EMTA remain free from all conflict of interest situations and that, if there is the appearance of a conflict of interest, full disclosure is made by the parties involved so there is transparency.

A. Personal Conflicts of Interest

No employee, officer, board member, or agent of EMTA may participate in such activities as contract specifications, solicitations, selection, or award, if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award: (1) an employee, officer, board member, or agent of EMTA; (2) any member of his or her

immediate family; (3) his or her partner;(4) an organization that employs, or intends to employ, any of the above.5

No employee, board member, officer, or agent of EMTA will make investments or act for personal gain based upon special knowledge obtained, whether directly or inadvertently, as a result of employment with EMTA.

No employee, board member, officer, or agent of EMTA will have any relationship or engage in any activity which might involve or lead to personal obligations which could impair the objectivity of such person's judgment, or imply to others that favoritism or obligations exist between such persons and third-party contractors, or subrecipients.

B. Proper Personal Conduct

No employee, board member, officer, or agent of EMTA will solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements. Unsolicited gifts or items of nominal intrinsic value may be accepted. Entertainment in any form must not be accepted if either party might feel an obligation or if a third party might infer that an obligation exists.6

C. Organizational Conflicts of Interest

When conducting business with third party contractors and subrecipients, disclosing information that may give them an unfair competitive advantage, or that may impair its objectivity in performing contract work is prohibited.

Furnishing advice or services to a firm bidding on or planning to bid on a contract with EMTA, or which is currently doing business with EMTA is prohibited. Accepting employment with such third parties is considered a strong conflict of interest (bias)situation, and may result in extreme disciplinary action.

D. Special Exceptions under FTA 4220.IF, Chapter III 8 1 a-c

Any interest as an owner, partner, joint venture or stockholder, in each case comprising one percent (1%) or less in any such organization, will not be deemed a " financial interest" prohibited hereunder, but serving as a Director, Officer, Consultant, or Employee of such organizations, or any other pecuniary capacity with such organization, will be deemed a " financial interest."

E. Issuance of Standards of Conduct

EMTA will issue these standards as a pre-employment orientation document to be read and signed by each employee involved in the procurement process, and placed into his/her personnel file. A copy of these standards will also be issued to each board member at the time of their appointment, or whenever an amendment is made.

F. Sanctions for Violation of Ethics /Standards of Conduct

Anyone violating the regulations for proper ethics and standards of conduct will receive appropriate disciplinary action (i.e. written warning, termination, dismissal from board).

IV. Disadvantaged Business Enterprises

EMTA maintains a Disadvantaged Business Enterprises program. The program is updated, in accordance with 49 C.F.R. Part 26.

V. General Procurement Practices

A. Awards to Responsible Contractors

EMTA will make every effort to ensure that all procurement activities be entered into with responsible businesses, persons, and contractors.

A responsible contractor is one which:

- Has adequate financial resources, or the ability to obtain such resources as required during the performance of the contract, if adequate security is not otherwise furnished;
- Is able to comply with the required or proposed delivery or performance schedule;
- Has a satisfactory record of performance or the equivalent, and?
- Has a satisfactory record of and reputation of integrity.⁷

B. Review of Procurement Requests to Avoid Duplicate or Unnecessary Purchases⁸

EMTA has procurement procedures for micro-purchases, small purchases, and large purchases (IFB/RFP/A&E), respectively. Senior managers complete micro and small purchases, and the CEO conducts IFB/ RFP/A&E purchases/contracts. Managers remain involved in purchases that affect their departments either through consultation with the CEO or serving on evaluation or oversight committees for larger procurements.

Because of the collaborative effort involved in conducting IFB/RFP/A&E, it is not possible to make duplicate purchases under this process. Because one person completes small and micro purchases in each functional area, there is no duplication of these purchases either.

Budget compliance is the responsibility of each department manager. Prior to the preparation of a purchase request, each department head must review his/her budget to ensure that funds are available.

Purchase orders, requisitions, or other written documentation of purchases are signed by Managers, CEO, or Board President as outlined in the requisition approval memo in Appendix B. This memo will be updated from time to time and kept on file with the

most current version of the procurement policy. These individuals are accountable for meeting budgets in their departments and understand what their departments are responsible for procuring, which avoids overlap. EMTA is a small, financially constrained organization and much attention is paid to purchasing only necessary items.

C. Competition; Non-Collusive Bids and Proposals

All purchases and sales, whether by formal advertising or otherwise, will be made on a competitive basis to the maximum practicable extent. In the event identical bids are submitted on any contract for the sale or purchase of property, the CEO will report such fact to EMTA's General Counsel if there is any reason to suspect collusion.

D. Splitting Purchases

Purchases will not be split, so as to place them in a smaller procurement category.

E. Purchase Orders

Purchase orders or other written documentation of purchases are required for all purchases as outlined in the Approval Authority Memorandum. A purchase order is not required for formal bids or proposals (IFB/RFP/A&E) which result in a signed contract. In an emergency, purchases may be authorized by the CEO to expedite the need to maintain or restore services and functional operations of the Erie Metropolitan Transit Authority. For all emergency purchases, a purchase order or written documentation must still be obtained the following business day or as soon as possible once the emergency has been addressed. Blanket purchase orders may be issued for up to one year for some items such as legal and other regularly occurring operating expense funded services or goods that have been quoted or bid from a particular supplier.

F. Entering into a Contract

Only the CEO or Board President are authorized to enter into a formal contract with a vendor.

VI. Methods of Procurement

A. Micro-Purchases

Micro-purchases are purchases or contracts that do not exceed \$3,000. As defined in *U.S. DOT/FTA 4220. IF, Chapter VI, i 3a*, purchases below that threshold may be made without obtaining competitive quotes, if EMTA determines that the price is fair and reasonable. The Davis-Bacon Act must be applied to construction contracts over \$2,000. Minimum documentation requirements include determination that the price is fair and reasonable, and how this determination was made.

Whenever feasible, it is EMTA's preference to complete a "Telephone Quote" form documenting at least two telephone quotes, or obtain copies of at least two written

quotes for such purchases. (See definition of written quote). All micro-purchases with only one quote must include the " Fair and Reasonable Price Determination Stamp", signed, dated, and the reason checked off.

If submitted electronically, the written quote must be printed. If the quote is obtained by telephone, the dates, names of vendors, addresses, phone numbers, and contact persons must be submitted for at least two vendors, and documented on the " Telephone Quote" form. Any documentation must be maintained with the purchase records. If a capital grant will be used to fund the purchase, copies of checks paid to vendors under that purchase will be made and stored with the purchase records.

B. Small Purchases

EMTA follows all applicable Municipal Authorities Act limits

Written quotes are documents submitted by the vendor to EMTA in writing via fax, mail, or electronic means. Once the written quotes are received and the low bidder has been determined, a " Purchase Order" form or other written documentation of the purchase will be completed. If a capital grant will be used to fund the purchase, copies of checks paid to vendors under that purchase will be made and stored with the purchase records.

C. Large Purchases

EMTA Follows all PA Municipal Authorities limits

1. General Requirements for all Large Purchases

- a. Practices Deemed Restrictive of Competition, and therefore not allowable include⁹
 - Unreasonable requirements placed on firms in order for them to qualify to do business;
 - Unnecessary experience and excessive bonding requirements;
 - Restraint of Trade: noncompetitive pricing between firms or between affiliated companies;
 - Noncompetitive awards to any person or firm on retainer contracts;
 - Noncompetitive awards to any person or firm on retainer contracts;
 - Organizational conflicts of interest (also applies to micro and small purchases);
 - Restrictive use of brand names (also applies to micro and small purchases);
 - Improper Prequalification: using prequalification procedures that conflict with the * prequalification standards described in *FTA Circular 4220. IF, Chapter VI, @1. c, '.* Geographic preferences (With the exception of Architectural and Engineering services).
- b. Prequalification: Prequalification lists are generally used in procurements that require lengthy evaluations to determine whether the product is satisfactory to

certain standards. EMTA may prequalify people, firms, and property if: 1) EMTA ensures that all prequalification lists it uses are current; 2) EMTA ensures that all prequalification lists it uses include enough qualified sources to provide for maximum full and open competition; and 3) EMTA permits potential bidders or offers to qualify during the solicitation period (from the issuance of the solicitation to its closing date). 10

- c. Specifications, Plans, and Drawings: Plans, drawings, or specifications will state only EMTA's actual minimum needs and will describe the property or service to be acquired or sold, as the case may be, in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to a relatively few bidders.

Where EMTA's requirements for a commodity can only be estimated, and bids are to be submitted based upon that estimate, the specifications for the commodity may provide that EMTA's requirements may vary within a given range from the estimate. However, a maximum and minimum amount should be stated to facilitate free and open competition. Specifications and drawings with references to brand names, or items manufactured by a single company, will be used to the minimum extent feasible. EMTA may not add quantities or options solely to allow them to be reassigned to another agency at a later date. 11

- d. Purchase Description: The description may include a statement of the qualitative nature of the property or services to be acquired. When possible, descriptions of requirements should be in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible.

When it is not possible or economical to provide a clear and accurate description of the technical requirements of the required property, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property. Where a "brand name or equal" purchase description is used, the "salient characteristics" of the brand name must be described so that bidders may offer an "or equal" product. Known, acceptable products should be listed.

Please see FTA 's Best Practices Procurement Manual for examples related to a "brand name or equal" description.12

- e. Alternate Articles - Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or quantities of material (e.g., where two or more articles will be equally acceptable to EMTA depending upon

relative price); however, the alternate articles or quantities must be precisely described to assure that the same degree of competition is obtainable.

f. Written Record of Procurement History - Large purchases must be documented by written procurement selection procedures. Such documentation may include records of specifications, plans and drawings, purchase descriptions, and alternate articles, in addition to formal advertising. Each contract file will contain documentation of actions taken with respect to the purchase, sale, or contract, including final disposition, sufficient to constitute a full history of the transaction in order to:

- Support actions taken by various employees of EMTA in connection with the purchase, sale, or contract;
- Provide information for reviews conducted by the Board or others having the right to conduct such reviews; and
- Furnish essential facts in the event of legal proceedings.

In the case of purchases, sales, or contracts in which formal advertising is required, each file may include the following data, in addition to such records as may be required by the above paragraph:

- Evidence of availability of funds;
- Rationale for the method of procurement;
- Description of work/scope of services;
- Copy of published legal notices;
- Selection of contract type;
- Basis for contract price;
- A copy of the budget or engineering estimates;
- A list of the bidders solicited or a memorandum explaining why the list of bidders was limited;
- A copy of the invitation for bids, or request for proposal, including any drawings and specifications, or a reference thereto;
- One copy of each signed bid or proposal received;
- Liquidated damages determination;
- A record of the abstract of bids;
- A document showing the reasons for the selection of the successful contractor;
- Contracting officer's determination of contractor responsiveness and responsibility
- Determination that price is fair and reasonable including an analysis of the cost or price
- data and required internal approvals for award;
- A copy of the contract or award;

- Notice of award;
 - Notice to unsuccessful bidders or offerors and record of any debriefing;
 - Record of any protest
 - Bid, Performance, Payment, or other bond documents, and notices to sureties;
 - Required insurance documents;
 - All pertinent correspondence;
 - Copies of all amendments or supplements to the contract, with supporting documents; and
 - Any additional documents reflecting actions peculiar to the specific purchase or sale; and
 - Documentation of late bids.
- g. Use of Technology/Electronic Commerce: EMTA will utilize electronic commerce to the extent feasible. At this time, this includes receipt of written quotes for small and micro purchases through electronic mail and publishing all large procurement not only in the newspaper but on our website www.ride-the-e.com

2. *Invitation for Bid (IFB)/Sealed Bids (Formal Advertising)*

In order to assure that the sealed bidding process is feasible, EMTA will make every effort to ensure that:

- A complete, adequate, and realistic specification or purchase description is available;
 - Two or more responsible bidders are willing and able to compete effectively for the business;
 - The procurement lends itself to a firm fixed price contract when feasible, and the
 - Selection of the successful responsive and responsible bidder can be made principally on the basis of price; and
 - No discussion with bidders is needed.
- a. Contents of Invitation for Bid: Invitation for bids will contain the applicable information described, and any other information required for a particular purchase or sale.

In the case of purchases, the invitation for bids will contain the following information, if applicable to the purchase involved:

- EMTA's address and name of issuing activity;
- Date of issuance;
- Date, hour, and place of opening;
- Description of the supplies or services to be furnished by the bidder in sufficient detail to permit full and free competition;

- Time of delivery or performance requirements;
 - Permission, if any, to submit alternate bids;
 - Bid Guarantee, performance bond, and payment bond requirements, if any;
 - When considered necessary, a requirement that all bids must allow a period for acceptance by EMTA of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated acceptance period will be rejected (the minimum period so stipulated should be no more than reasonably required for evaluation of bids);
 - In cases where bidders are required to have special technical qualifications, a statement of such qualifications;
 - Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference;
 - A statement that EMTA reserves the right to reject any or all bids;
 - A statement that EMTA reserves the right to cancel the invitation to bids, at its sole discretion, without penalty;
 - A statement that bids received after the exact time set for opening are "late bids," and will not be considered for award, except in certain circumstances, such as registered or certified mail that was not delivered on a timely basis, or it was determined that there was mishandling on EMTA's part;¹⁶
 - A statement that any modifications or bid withdrawals must be received prior to the set time for bid opening;¹⁷
 - Standard contract provisions provided by the Federal Transit Administration, as applicable. EMTA maintains a number of boilerplate instructions and conditions that contain general and special provisions for certain contract types;
 - In the case of sales, the invitation for bids will contain a description of the property to be sold by EMTA in sufficient detail to permit full and free competition.
- b. Methods for Soliciting Invitations for Bids - Specific methods used in solicitation of bids may include the following:
- All purchases and sales in which formal advertising is required will be awarded only after publication of the essential details of the invitation for bids in a newspaper of general circulation in the metropolitan area at least two weeks prior to the bid opening, longer if needed. Bidders will be allowed sufficient time to prepare bids before the date of bid opening.
 - A reasonable number of copies of invitations for bids, including specifications and other pertinent information, will be maintained at EMTA's administrative office.

- c. Receipt and Safeguarding of Bids will be as follows:
- All bids (including modifications) received prior to the time of opening will be kept secure, and except as provided in the paragraph below, unopened;
 - If an invitation for bids is canceled, or if a bidder effectively withdraws his/her bid in accordance with the specifications set forth, all bids, or the withdrawn bid, as the case may be, will be returned to the bidder(s);
 - Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the CEO;
 - If a sealed bid is opened by mistake, the person who opens the bid will immediately write his/her signature and position on the envelope, along with the date and time opened, as well as an explanation of why/how it was opened. The envelope will then be delivered to the CEO, and will be resealed.
- d. Opening of Bids: The following steps are taken in regard to the opening of bids:
- The CEO will decide and set the time for public bid opening, and will so declare to those present. He/she or a designated official of EMTA will then personally and publicly open all bids received prior to that time, and when practicable, read them aloud to the persons present, and have the bids recorded. The original of each bid will be carefully safe-guarded until the Abstract of Bids has been made and its accuracy verified
 - Examination of bids by interested persons will be permitted if it does not interfere unduly with the performance of EMTA's business. However, original bids will not be allowed to pass out of the hands of an official of EMTA, unless a duplicate bid is not available for public inspection. In such cases, the original bid may be examined by the public only under the immediate supervision of an official of EMTA, and under conditions which preclude possibility of a substitution, addition, deletion, or alteration in the bid.
 - Bids will not be opened if a protest is received within the time limits specified in the protest procedures within this document.
- e. Recording of Bids: All legitimate bids will be abstracted and recorded on the "Abstract to Bids" document. Information recorded will include:
- An identification of the invitation for bids;
 - Opening date;
 - General description of the item/contract being purchased or sold;
 - Names of each bidder;
 - Prices bid; and
 - Any other information required by bid evaluation.

When the items are too numerous to warrant the recording of all bids completely, entry should be made of the opening date, general description of

the material, item number, and the price bid. The abstract will be completed as soon as practicable after the bids have been opened. When all bids have been opened, the CEO will so certify on the abstract.

- f. Award of Bids - In the awarding of bids, EMTA will execute the following actions:
- Unless all bids are rejected, award will be made by the CEO, within the time for acceptance specified in the bid, or extension thereof, to the responsible bidder whose bid, conforming to the invitation for bids, is the lowest bidder. Awards given to " other than lowest bidder" are addressed in a succeeding section in this document.
 - Where the bids sought are for the award of concessions, EMTA will accept the bid of that responsible bidder whose base bid and other material terms, conforming to the invitation for bid will be most advantageous to EMTA, price and other factors considered.
 - In the event identical low bids are received, the CEO may, at his/her discretion, award the contract equally among the identical bidders, award the bid to the bidder who submitted his/her bid first, or may reject all bids and re-advertise. (See also section on Competition, Non-Collusive Bids and Proposers)
 - Awards will be made by mailing or presenting the bidder with a formal award. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid will be clearly and accurately set forth (either expressly, or be reference in the formal award document), since the award is an acceptance of the bid, and the invitation for bids, the bid and award constitute the contract.
- g. Amendment of Invitation for Bids - If, after issuance of an invitation for bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specification, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such change will be accomplished by issuance of an amendment to the invitation for bids. The amendment will be sent to everyone to whom invitations have been furnished. The following actions will also be taken:
- Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening and the need for extending this period must be considered.
 - Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegram, facsimile, telephone, or electronic mail. Such notification should be confirmed in the amendment.

- Acknowledgement of receipt of the amendment of invitation for bid should be received from each bidder, either when received or on a form provided to be submitted with the bid.
 - Any information given to a prospective bidder concerning an invitation for bids will be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to the bidders in submitting bids on the invitation, or if the lack of such information would be prejudicial to uninformed bidders.
 - No award will 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.
- h. Cancellation of Invitations Before Opening: EMTA will include in all solicitations for invitations for bid, a statement that EMTA reserves that right to cancel the solicitation without penalty, at its sole discretion. Since cancellations of an invitation for bids usually involves the loss of time, effort, and money spent by EMTA and bidders in carrying the bidding process up to the point of cancellation:
- Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the supplies or services, or where amendments to the invitation would be of such magnitude that a new invitation is desirable. Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the supplies or services, or where amendments to the invitation would be of such magnitude that a new invitation is desirable.
 - When an invitation is canceled prior to bid opening, bids which have been received will be returned unopened to the bidders, and a notice of cancellation will be sent to all prospective bidders.
 - The notice of cancellation will identify the invitation for bid, briefly explain the reason for cancellation, and where appropriate, assure prospective bidders that they will be given an opportunity to bid on any re-solicitation of bids or any future requirements for the type of material or services involved
- i. Modification or Withdrawal of Bids: Bids may be modified or withdrawn in writing, by telegraphic, by telecommunication, by facsimile, or by electronic mail. Modifications or withdrawals must be received by EMTA no later than the exact time set for opening of bids.

Acceptable procedures for modification or withdrawal of bids are as follows:

- A modification or withdrawal received by telephone from a receiving telegraph office will be considered if such message is confirmed by the telegraph company by sending a copy of the telegram which formed the basis for the telephone call.
 - Modifications received by telegram, including a record of those telephoned by the telegraph company, or by facsimile transmission, or by printed electronic mail, will be sealed in an envelope by an official of EMTA who will write thereon the date and time of receipt and by whom, the invitation for bid number, and his/her signature. No information contained therein will be disclosed prior to the time set for bid opening
 - A bid may be withdrawn in person by a bidder or his/her authorized representative, provided his/her identity is made known, and he/she signs a receipt for the return of the bid, but only if the withdrawal is prior to the exact time set for opening of bids.
- j. Rejection of All Bids: EMTA recognizes that the preservation of the integrity of the competitive bid system indicates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, or in the case of a sale, to that responsible bidder who made the highest responsive bid. Every effort will be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby preventing the unnecessary exposure of bid prices.

Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where the CEO determines in writing that:

- Inadequate or ambiguous specifications were given in the invitation;
 - The supplies or services being purchased are no longer required;
 - All otherwise acceptable bids received are at unreasonable prices;
 - Reasonable evidence exists that bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - Reasonable evidence exists that bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
 - For other reasons, cancellation is clearly in the best interest of EMTA.
- k. Rejection of Individual Bids: Any bid which fails to conform to the essential requirements or specifications of the invitation for bids will be rejected, unless the invitation authorized the submission of alternate bids. Alternate bids must meet the requirements specified in the invitation. Other reasons for rejection of individual bids may include:

- Any bid which fails to conform to the delivery schedule or permissible alternates thereto stated in the IFB will be rejected as non-responsive.
- Bids where the bidder attempts to impose conditions which would modify requirements of the IFB, or limit his/her liability to EMTA, such practices may include:
 - Attempts to protect himself/herself against future changes in conditions, such as increased costs, or the total possible costs to EMTA cannot be determined;
 - Fails to state a price and in lieu thereof, states that the price will be "price in effect at time of delivery" or equivalent; or
 - States a price but qualifies such price as being subject to "price in effect at time of delivery," or equivalent. A low bidder may be requested to delete objectionable conditions from his/her bid, provided these conditions do not go to the substance, as distinguishable from the form of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid, where it affects price, quantity, quality, or delivery of the item offered.
- Any bid may be rejected if it is determined to be priced unreasonably.
- Low bids received for concerns determined to be not responsible, as stated in the section on Responsible Bidders, will be rejected.
- Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the IFB, the bid will be rejected.

The originals of all rejected bids, and any written findings with respect to such rejection, will be preserved in the contract file.

- I. Disposition of Late Bids: Late bids which are not considered for award will be held unopened until after award, and then returned to the bidder, unless other disposition is requested, or agreed to by the bidder. An unidentified bid however may be opened solely for the purpose of identification.

The following will, if available, be included in the contract file with respect to each late bid:

- A statement of the date and hour of mailing, filing, or delivery, as the case may be;
- A statement of the date and hour of receipt;
- The determination of whether or not the late bid was considered for award, with supporting facts;
- A statement of the disposition of the late bid; and
- The envelope or covering, if the late bid was considered for award.

- m. Minor informalities or Irregularities in Bids: A minor informality is one which is merely a matter of form, or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on the price, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to other bidders. The CEO will either give the bidder an opportunity to correct the deficiency, or waive any such deficiency, where it is to EMTA's advantage.²³
- n. Mistakes in Bids: After opening of bids, the CEO will examine all bids for mistakes. In cases of apparent mistakes, and in cases where there is reason to believe that a mistake may have been made, he/she will request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter will be processed in the manner set forth below. Such actions will be taken prior to award:
- Any clerical mistake apparent on the face of a bid may be corrected by the CEO, if he/she has first obtained from the bidder, verification of the bid actually intended. Examples of such apparent mistakes are:
 - Obvious error in placing decimal point;
 - Obvious reversal of price f.o.b. destination and the price f.o.b. factory;
 - Obvious error in destination of unit.
 - Correction will be reflected in the award document.

The CEO, with the advice of EMTA's General Counsel, is authorized to make the following administrative determination in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award:

- Where an official of EMTA knows, or has reason to suspect, that a mistake in a bid has been made, a "Request for verification in bid" may be submitted to assure that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. In such case, a written request to the bidder that it verify its bid price will be prepared and submitted.
- Where the bidder requests permission to withdraw a bid, and clear and convincing evidence establishing the existence of a mistake, a determination permitting the bidder to withdraw his/her bid may be made. If the evidence is clear and convincing, as to the existence of a mistake, and as to the bid actually intended, and if the bid, (whether corrected or uncorrected) is the lowest bid received, a determination may be made to correct the bid and not permit its withdrawal.

- Where the bidder requests permission to correct a mistake in his/her bid, and clear and convincing evidence establishes the existence of a mistake, and as to the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the event such correction would not result in displacing one or more lower bids. If the evidence of the mistake, and the bid actually intended are not ascertainable substantially from the invitation and bid itself as opposed to evidence brought to EMTA in response to a request for verification, correction will not be allowed.
 - If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his/her bid may be made.
 - Where the evidence is not clear and convincing that the bid as submitted was not the bid intended, a determination may be made requiring that the bid be considered for award in the 24form submitted. (Refer to FTA Best Practices Procurement Manual, section 4. 4. 5 - Bid Mistakes for further recommendations and clarifications).
- o. Change Order Policy - Changes to contract agreements after award will be approved by the CEO. All change orders must be documented in writing, be supported by a written justification including a cost or price analysis, and signed and dated by the authorized officials.

3. Request for Proposals (RFP)24

Large and small purchases may be procured through competitive proposals/request for proposals, when conditions are not appropriate for the use of sealed bids. This can include conditions when the property or services needed are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present. In such cases, either a fixed price, or cost reimbursement type contract is awarded.

- a. Publicizing the proposal: Large Purchase Request for Proposals will be advertised in metropolitan newspapers, as well as solicitation from an adequate number of qualified sources.
- b. Selection Criteria - EMTA will list, in the request for proposals, the selection criteria. Price should always be a selection criterion.

EMTA may list selection criteria in the request for proposals, in order of priority with weights, if any. This is the preferred method, because if it is not done, EMTA

must establish the priority, weights and scoring method on an internal document prior to the day the RFP becomes available to potential proposers.

- c. Evaluation of Proposals: Proposals will be evaluated based on the evaluation criteria, not against other offers. Criteria for evaluation of proposals will be established prior to a request for proposals, and may include:
- Responsibility criteria, such as financial, human, and physical capabilities to perform the contract. (Refer to section 5.1 best Practices Procurement Manual - Responsibility of Contractor).
 - Technical criteria - may include the technical experience of the proposer, the suitability of the products or methods proposed for EMTA's needs, or objective performance criteria (fuel efficiency, percent savings guaranteed, proven ridership increases, etc.).
 - Price criteria - price must be evaluated, unless the Brooks Act applies (where price is only considered after the most qualified proposer is selected for procurement of A&E services). Awards will be made to the responsible firm whose proposal is most advantageous to EMTA's program, with price and other factors considered.
 - Compliance criteria - will include responsiveness to proposal requirements.
 - Management criteria - may include the qualifications of the project managers, the budget and schedule performance proposed and recorded on past projects, and the projected effectiveness of the management plan proposed.
- d. Award of Proposals: EMTA will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed agreement.

Consideration will be given to such factors as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Additionally, as stated above, awards will be made to the responsible firm whose proposal is most advantageous to EMTA's program with price and other factors considered.

- e. Request for Revised Proposals: In the event EMTA finds it necessary to revise an initial request for proposal because of deficiencies, the decision to do so will be approved by the CEO, and the deficiencies must be listed and explained.
- A complete revised proposal, including price (except under the Brooks Act) will be requested from each offeror in the competitive range.
 - Unless explicitly stated otherwise, the revised offer extinguishes the prior offer.
 - The proposer should identify all changes in the revised offer.

EMTA may exercise the right to request revised proposals as many times as necessary in order to obtain the most advantageous offer. 25

- f. Discussions and Clarifications (Negotiations): EMTA will exercise its right to hold discussions for clarifications with all offerors in the competitive range. At such time, negotiations and bargaining may be made. At which time, the offeror will have an opportunity to revise or modify his/her proposal. The discussions and negotiations may initially be written or oral, with appropriate documentation following the discussions. Strict confidentiality in such cases will be maintained. Emphasis will be made known to the offeror, that the name and number of proposals received is not normally considered a public record and need not be released to competitors or the public at large.²⁶
- g. Request for Best and Final Offer: A best and final offer (BAFO) may be requested from each offeror in the competitive range at the conclusion of discussions (negotiations) with those offerors. If an offeror does not respond to the request, EMTA may consider the most recent offer to be the best and final offer. The request for best and final offer will include:
- Specific notice that discussions are concluded;
 - Notice that this is the opportunity for the offeror to submit a best and final offer;
 - A definite, common cutoff date and time that allows a reasonable opportunity for the preparation and submission of the best and final offer, and
 - Notice that the final offer must be received at the place designated by the time and date set in the request and is subject to any provisions dealing with the submissions, modifications, and withdrawals of proposals set forth in the solicitation.

Following receipt of the best and final offers, officials of EMTA will evaluate them in accordance with terms of the solicitation and recommend award in accordance with those terms. EMTA will make every attempt to submit only one request for best and final offer, however, in the event additional technical or price/cost related issues surface as a result of the offerors' final submissions or other factors that preclude a reasonable justification for contractor selection and award, EMTA may submit request for subsequent best and final offers, as it may be clearly in the best interest of EMTA. 27

- h. Award Based on Initial Proposals - EMTA may accept one of the initial proposals if it can be demonstrated that acceptance of the most favorable initial proposal without discussion will result in a fair and reasonable price. Solicitations for proposals will contain a notice that award may be made without discussion of

proposals received, and that proposals should be submitted initially on the most favorable terms possible, from a price and technical standpoint. 28

- i. Withdrawal of Proposal - In order to avoid frivolous offers, or offers submitted with the sole intention of casting light on other offers, the solicitation for the request for proposals will state a date and time by which offers must be submitted, and a period following that date during which offers remain firm. Proposers will be allowed to withdraw or modify their proposals up to the time due. However, it will also be stated that after that date all proposals are firm and cannot be withdrawn, regardless of whether the proposer has had second thoughts.29 1
- j. Debriefing Unsuccessful Offerors: EMTA will maintain complete records on its award decision, and how it came to that decision. EMTA will remain as objective as possible in making that decision. In the event a proposer was excluded from the competitive range, and requests a debriefing, the CEO, at his/her discretion will offer a candid explanation of the process. However, if EMTA foresees that a dispute is probable, it is not required to notify or debrief unsuccessful offerors.30

4. Two-Step Procurement Procedures 31

EMTA may use two-step procurement procedures in both sealed bid and competitively negotiated procurements, as long as the opportunity for full and open competition remains.

- a. Review of Technical Qualifications and Approach: The first step is a review of the proposing contractors' technical approach to the request and technical qualifications to carry out the approach. EMTA may then narrow the competitive range to prospective contracts that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- b. Review of Bids and Proposals Submitted by Qualified Prospective Contractors: The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified Unless there are exceptional circumstances, EMTA should attempt to solicit at least three bids or proposals for qualified prospective contractors.

5. Procurement of Architectural and Engineering Services (A &E)32

When procuring architectural, engineering, or related services, EMTA will use competitive proposal procedures based on the Brooks Act, as defined in 40 U.S.C. kl101 through 1104. Other types of services considered A&E services include program

management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether the Brooks Act may be used. Provided a sufficient number of qualified firms are eligible to compete for the third-party contract, the contractor's geographic location may be a selection criterion.

The Brooks Act requires that:

- An offeror's qualifications be evaluated;
- Price be excluded as an evaluation factor;
- Negotiations be conducted with only the most qualified offeror; and
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to EMTA.

This "qualification-based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

Audits and Indirect Costs: The following requirements apply to a third-party contract for program management, architectural, engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services:

- a. Performance of Audits: The third-party contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.
- b. Indirect Cost Rates: EMTA and the third-party contractor, its subcontractors, and subrecipients, if any, must accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.
- c. Application of Rates: After a firm's indirect cost rates established are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or de factor ceilings.
- d. Prenotification; Confidentiality of Data: Before requesting or using cost or rate data, EMTA must notify the affected firms. That data must be kept confidential and may not be accessible by or provided by the group of agencies that share cost data, except by written permission of the audited firm. Before requesting or using cost or rate data, EMTA should notify the affected firm and also obtain

permission to provide that data in response to a valid request under applicable State law.

6. Design-Bid-Build

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

7. Design-Build

The design-build procurement method consists of contracting for design and construction at the same time with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.

8. Procurement by Other than Full and Open Competition (Noncompetitive Proposals/Sole Source)³³

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

a. General Guidelines for Other than Full and Open Competition

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

- **Competition Adequacy:** After soliciting several sources, FTA expects EMTA to review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. If it is determined that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, EMTA may determine the competition to be adequate. A cost or price analysis must be performed prior to award.
- **Sole Source:** When EMTA requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, a sole source award may be made. This can occur through a unique capability or availability from the contractor or through a single bid or proposal.

- Unusual and Compelling Urgency: to include when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the needed property or services.
- Authorized by FTA

Less than full and open competition is not justified based on EMTA failure to plan or limited availability of federal assistance (i.e., pending expiration of grant funds).

- b. Procurement Procedures: for less than full and open competitive procurements involve soliciting offers from as many sources as possible; providing a sole source justification if it is decided to solicit a proposal from only one source; preparing or obtaining a cost or price analysis; and submitting for pre-award review to FTA if requested.

9. Awards to Other than the Lowest Bidder

EMTA may award a third-party contract to other than lowest bidder, when such an award is in the best interest of EMTA.³⁴

10. Acquisition of Real Property

EMTA will comply with the " Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Program," 49 CFR Part 24, and FTA Circular 5010.ID when purchasing real property.³⁵

11. Leasing Project Proper to Another Party

In the event EMTA chooses to lease property purchased with federal funds to another party, EMTA agrees to retain ownership of the property, and assure that the lessee will use the property appropriately, either through a " Lease and Supervisory Agreement," or another similar document. Upon request by FTA, EMTA agrees to provide a copy of any relevant documents.³⁶

VII. Protest Procedures

Any actual or prospective bidder, proposer, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest with the EMTA Chief Executive Officer. The EMTA Chief Executive Officer will inform FTA immediately of a protest received by EMTA that involves a procurement funded by FTA.

The procedures for submitted protests are as follows:

If a bidder/proposer perceives that a segment of the specifications is either too restrictive for competition or if the bidder/proposer perceives that a segment of the specifications is either too restrictive for competition or if the bidder/proposer perceives any improprieties in the solicitation or specifications, a written protest must

be filed with the EMTA Chief Executive Officer at least five (5) business days prior to bid opening or the due date for proposals. Any protests concerning the award of a contract after the bid opening, or after a public announcement by EMTA of a contractor selection decision, or after an evaluation of proposals submitted under an RFP, must be made within five (5) days after the bid opening, or public announcement in the case of an RFP, in order to permit EMTA the opportunity to resolve the issue prior to contract award.

Contents of Protest to EMTA

A bidder or proposer filing a protest with EMTA must submit the protest in writing, via certified United States mail with a return receipt request, to Erie Metropolitan Transit Authority (EMTA) c/o Chief Executive Officer, 127 East 14th Street, Erie, PA 16503. The protest must include:

- (1) The name and address of the bidder;
- (2) Project number and number of the solicitation
- (3) A detailed and factual statement of the grounds for protest and any supporting documentation submitted to EMTA must be fully supported to the extent possible
- (4) The desired relief, action or ruling from EMTA.

Following an adverse decision by the Chief Executive Officer, the bidder or proposer may file a protest with FTA Regional Office 3 for resolution.

FTA Review of Protest: A protestor must exhaust all administrative remedies with EMTA before pursuing a protest with FTA. Review of a protest by FTA will be limited to:

- (1) EMTA' failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) Violations of Federal law or regulation.

Following an adverse decision by the Chief Executive Officer, the bidder may file a protest if there has been a violation in connection with 1 or 2 above. An appeal to FTA must be received by the U.S. Department of Transportation, Federal Transit Administration ("FTA"), Region III 1760 Market Street, Suite 500, Philadelphia, PA 19103, within five (5) working days of the date the protestor learned or should have learned of an adverse decision by the Chief Executive Officer or other basis of appeal to FTA.

Contents of Protest to FTA

A bidder filing a protest with FTA must submit the protest in writing, via certified United States mail with a return receipt request, to the U.S. Department of Transportation,

Federal Transit Administration ("FTA"), Region III 1760 Market Street, Suite 500, Philadelphia, PA 19103. The protest must include:

- (1) The name and address of the bidder;
- (2) Identification of the grantee (EMTA), project number and the number of the solicitation;
- (3) A detailed and factual statement of the grounds for protest and any supporting documentation. The documentation submitted to FTA must be fully supported to the extent possible;
- (4) A copy of the protest filed with EMTA, and a copy of the EMTA decision, if any; and
- (5) The desired relief, action or ruling from FTA.

FTA will not consider any data that was not submitted to EMTA. If new data becomes available after the exhaustion of administrative remedies with EMTA, that data should be submitted to EMTA with a request for reconsideration. If the request is denied or if the protestor's administrative remedies with EMTA are again exhausted, the protestor may then submit the new data to FTA.

No formal briefs or other technical forms of pleading or motion are required, but a protest and other submission should be concise, logically arranged, and clear.

Bid protests must be filed with FTA no later than five (5) days after the exhaustion of administrative remedies with EMTA is known or should have been known, whichever is earliest.

VIII. Contract Administration System

EMTA will actively manage all contracts. This is generally done by the person at EMTA who requested the service or goods. For example, the Operations Manager manages the maintenance contract, and the Community Relations Manager manages the contract with a typesetting and design firm through ongoing meetings. Contracts will be managed by the person requesting the goods or services, or assigned to other staff by the CEO.

IX. Contract Clauses

A. Required Contract Clauses

EMTA maintains a current list of required contract clauses applicable to contract type as required by the FTA (see Appendix G for clauses for small purchases). When establishing contract agreements, including small purchases, all contracts will include provisions to define a sound and complete agreement. EMTA will also refer to the U.S. DOT FTA Master Agreement, U.S. DOT FTA Third Party Procurement Manual, and the U.S. DOT Best Practices

Procurement Manual, Chapter 8 -Contract Clauses, when establishing required contract clauses.38

B. General Contract Clauses

EMTA maintains a boilerplate of general contract clauses that apply to many purchases.

C. Special Contract Clauses and Additional Special Contract Clauses

Special contract clauses may be applied selectively to purchases based on contract type or some other variable criteria. In the case of special contract clauses, EMTA may consult FTA rules and regulations and/or EMTA General Counsel, before such clauses are incorporated into any contract agreement.

D. Procuring Equipment or Materials Using Option Clauses

1. Definition of option Contract

An option is a unilateral right in a contract by which, for a specified time, EMTA may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract.

2. FTA Requirements for Option Contracts

If EMTA elects to use option clauses in contracts, the FTA requires the following:

- Evaluation of Options. The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement, and will be subject to a cost or price analysis before exercising.
- Exercise of Options. EMTA will ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award. It will also be 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.39

3. Piggybacking - Purchasing Options on Other Grantee 's Bus Procurement

EMTA may acquire contract rights through assignment from another recipient. In the event EMTA elects to purchase options on another grantee's bus procurement it will be established that the original purchaser's options are reduced by the same number that has been assigned to EMTA, otherwise EMTA understands that this may constitute a sole source procurement. A price analysis must also be performed before EMTA exercises such an option.40

Appendix H contain a copy of FTA's "Piggybacking Worksheet" from the FTA's Best Practices Procurements Manual. The worksheet shall be completed prior to

procurement via piggybacking to determine if a situation exists where EMTA may be able to participate in the piggybacking(assignment) of an existing agreement.

X. Contract Guidance

A. Maximum Length of Service and/or Supply Contracts 41

EMTA will not enter into either rolling stock or replacement parts contracts with a period of performance exceeding five (5) years, inclusive of options. However, delivery of vehicles is allowed after this date, as long as the contract or options for these vehicles were executed within five years of the original agreement execution date.

All other contracts (supply, service, leases of real property, revenue, construction, etc.) should be based on sound business judgment. If it is determined that it would be beneficial to enter into a contract for greater than 5 years, a memo will be written justifying this action and will be included in the procurement file.

B. Purchasing Extended Warranties with Capital Grant Funds

EMTA may purchase extended warranties with capital grant funds. However, FTA's Best Practices Procurement Manual encourages grantees to evaluate the cost of an extended warranty through a separate analysis from the acquisition costs so that the best business decision may be made.

In the case of warranty provisions for bus procurements, EMTA will adopt the American Public Transit Association's (APTA) Standard Bus Procurement Guidelines, which have been accepted as industry standard by FTA, and are summarized as follows:

- Complete Bus - 1 year or 50,000 miles
- Body and Chassis (structural integrity) - 3 years or 150,000 miles
- Body and Chassis{corrosion/fatigue) - 12 years or 500,000 miles
- Propulsion System (i.e. engine, transmission, axles) - 5 years or 300,000 miles
- Major Subsystems (i.e. brakes, signs, heat, A/C, doors, air compressor/dryer, W/C lifts, ramps, starter, alternator) - 3 years or 150,000 miles

All RFPs, IFBs, and other solicitation documents and contracts will be maintained in the procurement files for purchase of such warranties or extended Services.⁴²

C. Payment Provisions in Contracts

1. Using Advance Payments

EMTA will not enter into any contractual agreement to pay any or part of the payments prior to costs incurred by the contractor, unless prior written concurrence is obtained from the FTA Administrator.⁴³

2. Using Progress Payments

Progress payments are defined as payment for contract work that has not yet been completed. EMTA may use FTA assistance for progress payments as long as EMTA obtains adequate security for the payments and has sufficient written documentation to authenticate the work for which payment is requested. The Common Grant Rules require that any progress payments for construction projects be made on a percentage of completion method. However, EMTA may not use the percentage of completion method for any other types of contracts.⁴⁴

3. Withholding and Final Payment

EMTA will refer to specific contract provisions that expressly authorize the withholding of payments, such as the Davis Bacon Act Clause, or the Contract Work Hours and Safety Standards Act Clause. EMTA may also establish payment withholding based on the standard Federal government clause for the payment of fixed fee on Cost Plus Fixed Fee contracts, which call for a 15% withholding of the fixed fee until the contractor submits a certified final indirect cost rate proposal and otherwise complies with the final deliverable documentation requirements of the contract.

In the event EMTA decides to withhold payments on a contract, it will ensure that the amount of money withheld bears a reasonable relationship to the unsatisfactory work (e.g. the amount withheld will represent a reasonable estimate of the contractor's potential liability). The amount withheld will not be so great however, such that it impairs the contractor's ability to perform.

Final payment will be made to the contractor when it has satisfied all of the deliverable requirements called for by all provisions of the contract, including all required documentation. Before making final payment, EMTA may obtain a signed release from the contractor releasing it from further claims by the contractor.⁴⁵

EMTA may also establish a standard retainage on construction contracts of approximately 10%, which is paid only upon completion, inspection, punch list completion and acceptance of the final project. This retainage is paid at the end of the project in order to motivate contractors to complete the project.

XI. Specific Contract Types

A. Revenue Contracts

A revenue contract is any contract whose primary purpose is to either generate revenues in connection with a transit related activity or to create business opportunities using an FTA-funded asset. Examples may include advertising, concessions (food and newsstands), use of rights-of-way, licenses, and land and property leasing. EMTA will adhere to the following conditions regarding such contracts:

- No contract award will be entered into for any period beyond 5 years, without written documentation as to the benefit to EMTA for the amount of time the contract is to be entered for;
- EMTA will use competitive selection procedures for award of such contracts; and
- EMTA will not exclude Disadvantaged Business Enterprises (DBEs) from participating in business opportunities by entering into long-term, exclusive agreements with non-DBEs for the operation of major transportation-related activities or major activities for the provision of goods and services.⁴⁶

B. Use of Time and Materials Type Contracts

EMTA will use time and materials type contracts only:

- After a determination that no other type contract is suitable; and
- If the contract specifies a ceiling price that the contractor will not exceed except at its own risk.⁴⁷

XII. Methods for Performing Cost and Price Analyses

EMTA will conduct a cost or price analysis in connection with every large procurement action, including contract modifications. For small and micro purchases, refer to the appropriate sections.

A. Cost Analysis

1. when to Perform a Cost Analysis

A cost analysis will 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; or
- Adequate price competition (2 or more bids or proposals) 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.

A price analysis may be used in other instances to determine the reasonableness of the proposed contract.⁴⁸

2. Cost Analysis Process

Some common elements in performing cost analysis may include the following:

- Making an estimate based on inspection of the product itself (with technical guidance), review of drawings, specifications, and prior data (such as cost data from prior procurements);
- Review of each element of cost to determine whether the offeror's estimate contains an accurate and reasonable prediction of the cost incurred during performance; and/or
- Adding a rate of profit to the cost that has been determined to be fair.

All reasonable costs of performance can be considered; however, the cost will be consistent with Federal cost principles found in Federal Acquisition Regulation Part 31.

B. Price Analysis

Some common price analysis techniques that may be considered may include:

- Comparison of proposed prices received in response to the solicitation;
- Comparison with competitive, published price lists, published market price of commodities, similar indexes, and discount or rebate arrangements;
- Comparison of proposed prices with the cost estimate performed prior to solicitation, if it can be performed such that it can render a reasonable determination that the price is reasonable; and
- Comparison of proposed prices received with prior procurement actions for the same or similar end items, with consideration given to:
 - Changes in economic conditions between the times of the two procurements;
 - Differences in quantities; and
 - Inclusion of nonrecurring cost in the prices, such as design, capital equipment, production facilities, etc. To make a fair comparison, nonrecurring costs may be removed from both prices.

C. Profit

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

D. Federal Cost Principles

EMTA will make every effort to ensure that all cost estimates included in negotiated prices are consistent with Federal cost principles. In doing so, EMTA will reference past and current cost principles that comply with applicable Federal cost principles.

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

XIII. Rental/Leasing in Lieu of Purchase

In certain situations, EMTA's equipment requirements may be more economically filled by rental/lease than by purchase. The decision to rent rather than purchase must be made on a case-by-case basis, and should only be used when it is in EMTA's best interest. The CEO should perform a lease versus purchase analysis to support the decision to rent or lease for amounts over \$50,000.

Decisions to rent/lease may be made for short-term leases of equipment which is required for a short time or for a unique task, or when it can be determined that it is easier to have equipment maintained if it is leased. Conversely, long term leases and leases for items that should be purchased and capitalized but cannot be because of budget constraints are not considered economically prudent.

A lease versus purchase analysis should be appropriate to the size and complexity of the procurement. In determining whether the lease of equipment is feasible, the following factors must be considered:

- Estimated length of the period the equipment is required and the amount of time of actual equipment usage;
- Financial and operating advantages of alternative types and makes of equipment;
- Total rental/lease cost for the estimated period of use;
- Net purchase price, if acquired by purchase;
- Transportation and installation costs;
- Maintenance and other service costs;
- Trade-in or salvage value;
- Imputed interest costs; and
- Availability of a servicing facility especially for highly complex equipment (can EMTA service the equipment if it is purchased?).⁴⁹

For description of other leases and requirements such as Capital leases, leases involving Certificates of Participation, and Cross-Border leases, refer to US. DOT FTA Master Agreement, section 16.

XIV. Purchasing / Leasing Buses with FTA Funds (Bus Testing)

To the extent applicable, EMTA agrees to comply with the requirements of 49 U.S.C. 95323(c) and FTA regulations, " Bus Testing," 49 C.F.R. Part 665, and any revision thereto, for buses purchased or leased with FTA funds. EMTA will certify to FTA that any new bus model

required to be tested has been tested at the FTA-sponsored test facility in Altoona, Pennsylvania.

A new bus model is a bus design variation of a bus design (usually designated by the manufacturer by a specific name and/or model number) that has not been in use in U.S. mass transit service prior to October 1, 1988, or that has been in service prior to that date, but is being procured with a major change in configuration or components. A new bus model must be tested. Bus testing requirements apply to different mass transit vehicles including vans, other small vehicles, medium-light-duty mid-size buses, and heavy-duty small and large buses. Bus testing does not apply to unmodified mass-produced vans, bus prototypes, some electric buses, or trolley buses (meaning genuine trolleys, not replica trolleys).

EMTA will maintain documentation in the procurement files to demonstrate how this requirement has been implemented. This documentation will indicate whether a bus model has been tested and whether testing is required. For buses that require testing, a copy of the test report must be obtained prior to acceptance of the buses and expenditure of Federal funds.⁵⁰

XV. Disposition of Surplus and Scrap

A. Premature Withdrawal of Property from Use

EMTA will notify FTA immediately when any Project real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

Unless otherwise approved by the FTA, EMTA will remit to FTA its share of the fair market value of real property, equipment, or supplies prematurely withdrawn from appropriate use. The amount of Federal share in the property will be determined on the basis of the ratio of the Federal assistance awarded by the Federal Government for the property to the actual cost of the property. EMTA agrees that the fair market value of the property prematurely withdrawn from use will be calculated as outlined in the U.S. DOT FTA Master Agreement.⁵¹

B. Capital Inventory

EMTA will conduct a physical inventory of equipment and reconcile the results with the equipment records every two years. Documentation of the inventory and any reconciliation with equipment records will be kept until a triennial or state review of that inventory.⁵²

C. Identification of Surplus and Scrap

The identification of surplus and scrap will be the responsibility of the CEO. The following justifications may apply:

- Equipment will be surplus when it becomes obsolete to EMTA either because it has been replaced by more cost-efficient equipment, or because its services equipment no longer in the EMTA fleet.
- Parts are surplus when stock on hand exceeds a maximum, as established or revised due to use history, and are not expected to be used. This includes useful parts for vehicles no longer in EMTA. Equipment will be scrapped when it is non-functional and non-repairable, or when it is obsolete to EMTA and all other operators EMTA has contracted.
- Parts will be scrapped when they are not useful to EMTA and other operators contracted, and they cannot be returned to the supplier.

D. Disposition of Surplus Stock

Surplus stock uses both inventory space and working capital. It is the policy of EMTA to dispose of surplus and scrap in the most effective manner available. Steps to be followed include, but are not necessarily limited to:

- Returning to vendor for credit
- Sale to other operators

Surplus stock which cannot be returned or sold to another operator will not be sold as scrap while it is still applicable to vehicles in the EMTA feet. All sales over \$5,000 will be by cashier's check.

E. Disposition of Scrap

Parts or equipment identified as scrap will be sold to the highest bidder of at least two (2) scrap dealers willing to make bids, or to the highest bidder in a publicly advertised sale. Disposition of equipment identified as scrap will be coordinated with the CEO, since its disposition may have grant or property record implications. All sales over \$5,000 will be by cashier's check.

F. Specific Procedures for Disposition of Surplus and Scrap

Specific procedures may include:

- Competitive bidding procedures for all material offered for sale.
- Development of specifications for the surplus items to be offered for sale and review by the CEO.
- Preparation of a solicitation and advertising of the items being offered for sale.
- Analysis of bids by the CEO, with a written recommendation for award.⁵³

Appendix A

Abstract of Bids

Agency Name

Abstract of Bids Form

Solicitation Number:	Open no Time and Date:	Pane of Pages
Description of Supplies or Services:		
Name of Bidder/Proposer:	Amount of Bid	Comments

I certify that I have opened, read, and recorded on this bid abstract all offers received in response to the above solicitation.

Print Name

Title


Date

Signature _____

Appendix B
Approval Authority Memorandum

Appendix C-1

Sample Purchase Order

		<i>Purchase Order</i>		81623	
		ERIE METROPOLITAN TRANSIT AUTHORITY ERIE, PENNSYLVANIA (814)459-4287 FAX (814)456-9032		DATE: <u>March 1, 2024</u>	
Name Company Name Address City, St, ZIP SHIP TO: 1402 Parade Street Erie, PA 16503		BILL TO: 127 East 14th Street Erie, PA 16503		IMPORTANT This order is subject to all terms and conditions as appears on bottom NOTE CAREFULLY	
ACCOUNT NO.	QUANTITY	UNIT AND DESCRIPTION	UNIT PRICE	Total	
		Product ABC		\$ -	
		Page 1			
		Contractor agrees to comply with the required FTA Third Party Contract Clauses. Clauses are determined by the value of the contract. These clauses can be viewed at EMTA's website under the procurement page.			
Total				\$0.00	
Requisitioned by _____		Date _____		Approved by _____	
		Date _____			

Appendix C-2

Stamp

Sample of Stamp

EMTA

Fair and Reasonable Price Determination

I hereby determine the price to be fair and reasonable based on at least one of the following:

- Found reasonable on recent purchase
- Obtained from current price list
- Obtained from current catalog
- Commercial market sales price from advertisement
- Personal knowledge of Item procured
- Regulate rate (utility)
- Other

Signed: _____

Date: _____

Use only for purchases under \$3,001.

Alternative to 2 written quotes or telephone quotes on Micro-Purchase form

**Appendix D Telephone
Quote Form**

**EMTA
MICRO PURCHASE FORM
(Telephone quotes under \$3001)**

ITEM DESCRIPTION:

VENDOR #1

Name: _____

Address: _____

Phone #: _____

Contact Person: _____

Date: _____

Price Quote \$ _____

VENDOR #2

Name: _____

Address: _____

Phone #: _____

Contact Person: _____

Date: _____

Price Quote \$ _____

VENDOR #3

Name: _____

Address: _____

Phone #: _____

Contact Person: _____

Date: _____

Price Quote \$ _____

* A minimum of two quotes is necessary. ** Circle the price quote of the vendor selected.

SMALL PURCHASE FORM

(For items greater than \$3,000 and less than \$100,000 with only one available vendor.)

ITEM Description:

Stamp for Items available only from equipment manufacturer

The item listed above is only available from the original manufacturer and the price EMTA is paying for this item is no more than the price paid by other customers for similar volumes.

I hereby determine that the price EMTA is paying is no more than other customers are paying for similar volumes because:

1. It was obtained from a current published price list
2. It was obtained from a current catalog
3. It is similar to items procured from other vendors and also similar in price.
4. I have received copies of invoices for these items from the manufacturer that I have verified with at least one other customer. This is the only acceptable method of determination allowed for a single order of items over \$3,000. I have attached a copy of this invoice to this determination and will forward it to along with other purchasing information to accounting.

Customer Name: _____

Contact Name: _____

Date of Contact: _____

Signed: _____

Date: _____

Appendix E

Method of Procurement Decision Form

To best determine what method of procurement is suitable, classify your situation by checking off the appropriate boxes below. All elements must apply to use that method.

Micro purchase	Competitive Procurement	Sole Source
Amount <\$3,000	Amount >\$3,000	OEM or custom item
Multiple Sources	Multiple sources available	Only one source available
	Not an emergency purchase	Approved by FTA - sole source
	Sealed Bid (IFB) Competition is inadequate or purchase description Two or more responsible bidders willing to compete Selection can be made on basis of Procurement suitable for firm, fixed price No discussion with bidders needed after receipt of offers	Public exigency issue/emergency
	Bidder input needed for specification Two or more responsible bidders willing to compete Discussion needed with bidders after receipt or proposals, prior to award Fixed price can be set after Discussions	Complete & adequate specs after public solicitation
	Time and Materials Contract (subset of RFP) Fixed price cannot be set for work Complete extent of work unknown, whether time, or material use, or both	Emergency Procurement (subset of sole source) There is a health and safety price issue that prohibits delay

Appendix F

Contractor Responsiveness and Responsibility Form

Responsibility Determination Form

RFP No:

Supplier:

Date:

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

Acceptable	Comment
1. Ability to meet the delivery schedule.	Yes / No
2. Satisfactory period of performance.	Yes / No
3. Satisfactory record of integrity, on declined or suspended	Yes / No / not
4. Receipt of all necessary data supplier.	Yes / No / from
5. Debarred and Suspended List been checked (supplier not listed)	Yes / No / has

Appendix G FTA Clauses

FEDERALLY REQUIRED AND OTHER MODEL CLAUSES REQUIRED CERTIFICATIONS, REPORTS, AND FORMS

A current copy of guidance for use of FTA required and other model clauses and required certifications, reports and forms are located at appendix D of:

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf>

Appendix H

PIGGYBACKING WORKSHEET		
WORKSHEET	YES	NO
1. Have you obtained a copy of the contract and the solicitation document, including the specifications and any Buy America Pre-award or Post-Delivery audits?		
2. Does the solicitation and contract contain an express "assignability" clause that provides for the assignment of all or part of the specified deliverables?		
3. Did the Contractor submit the "certifications" required by Federal regulations? See BPPM Section 4.3.3.2.		
4. Does the contract contain the clauses required by Federal regulations? See BPPM Appendix A1.		
5. Were the piggybacking quantities included in the original solicitation; i.e., were they in the original bid and were they evaluated as part of the contract award decision?		
6. If this is an indefinite quantity contract, did the original solicitation and resultant contract contain both a minimum and maximum quantity, and did these represent the reasonably foreseeable needs of the parties to the contract?		
7. If this piggybacking action represents the exercise of an option in the contract, is the option provision still valid or has it expired?		
8. Does your State law allow for the procedures used by the original contracting agency: e.g., negotiations vs. sealed bids?		
9. Was a cost or price analysis performed by the original contracting agency documenting the reasonableness of the price? Obtain a copy for your files.		
10. 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.IF, 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," and (c) FTA Circular 4220.IF.

Appendix I

Endnotes

- 1 U.S. DOT FTA Circular 4220.IF Chapter I, 5b,
http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html
 - 2 U.S. DOT FTA Circular 4220.IF Chapter I, 5j.
 - 3 U.S. DOT FTA Circular 4220.IF Chapter VI, 3c-h, See also Best Practices Procurement Manual Chapter 4, Page 3, 4.0
- Overview
- 4 U.S. DOT FTA Circular 4220.IF, Chapter I,
 - 5 b. s U.S. DOT FTA Master Agreement, Section 3, page 17, Ethics. See also U.S. DOT FTA Circular 4220.IF, Chapter III 5 la-c
 - 6 U.S DOT FTA Best Practices Manual, Section 2.4.2.2.2, Written Standards of Conduct
 - 7 U.S. DOT FTA Circular 4220.IF, Chapter IV, 2a
 - 8 U.S. DOT FTA Circular 4220.IF, Chapter IV, 1b
 - 9 U.S. DOT FTA Circular 4220.IF Chapter VI 2a (4). See also U.S. DOT FTA Best Practices Procurement Manual Section 2.4.2.1 Full and Open Competition Principle.
 - 10 U.S. DOT FTA Circular 4220.IF, Chapter VI, 1c
 - 11 U.S. DOT FTA Circular 4220.IF, Chapter VI, 2a (2). See also U.S. DOT FTA Best Practices Procurement Manual, section 3.1, Types of Specifications and Risks
 - 12 U.S. DOT FTA Circular 4220.IF, Chapter VI, 2a
 - 13 U.S. DOT FTA Circular 4220.IF, Chapter III, 3a, 3d
 - 14 U.S. DOT, FTA Circular 4220.IF, Chapter III, 3f
 - 15 U.S. DOT FTA Circular 4220.IF Chapter VI, 3c
 - 16 U.S. DOT FTA Best Practices Procurement Manual, section 4.4.2, Bid Opening and Section 4.3.3.1 Receipt of Offers
 - 17 U.S. DOT FTA Best Practices Procurement Manual, section 4.3.2.3, Solicitation, and section 4.4.6, Bid Withdrawal
 - 18 U.S. DOT FTA Circular 4220.IF, Chapter VI, 3c
 - 19 U.S. DOT FTA Best Practices Procurement Manual, section 4.4.2, Bid Opening

- 20 U.S. DOT FTA Best Practices Procurement Manual, section 4.3.2.5, Amendment of Solicitations
- 21 U.S DOT FTA Best Practices Procurement Manual, section 4.3.3.3.1, Acknowledgement of Solicitation Addenda
- 22 U.S. DOT FTA Best Practices Procurement Manual, section 4.4.6, Bid Withdrawal
- 23 U.S. DOT FTA Best Practices Procurement Manual, section 4.4.5, Bid Mistakes
- 24 U.S. DOT FTA Circular 4220.IF, Chapter VI, 3d and U.S. DOT FTA Best Practices Procurement Manual, section 4.5, Competitive Proposals (Request for Proposals)
- 25 U.S. DOT FTA Best Practices Procurement Manual, section 4 5.5.1, Request for Revised Proposals
- 26 U.S. DOT FTA Best Practices Procurement Manual, section 4 5.4, Discussions and Clarifications
- 27 U.S. DOT FTA Best Practices Procurement Manual, section 4 5.5.2, Request for Best and Final Offer
- 28 U.S. DOT FTA Best Practices Procurement Manual, section 4 5.6, Award Based on Initial Proposals
- 29 U.S. DOT FTA Best Practices Procurement Manual, section 4 5.7, Withdrawal of Proposals
- 30 U.S. DOT FTA Best Practices Procurement Manual, section 4 5.8, Debriefing Unsuccessful Offerors
- 31 U.S. DOT FTA Circular 4220.IF, Chapter Vi, 3e
- 32 U.S. DOT FTA Circular 4220.IF, Chapter Vi, 3f and U.S. DOT FTA Master Agreement, section 15p
- 33 U.S. DOT FTA Circular 4220.IF, Chapter Vi, 31and U.S. DOT FTA Best Practices Procurement Manual, section 4.6, Non-Competitive (Sole Source) Proposals
- 34 U.S. DOT FTA Master Agreement, section 15r
- 35 U.S. DOT FTA Master Agreement section 22a and U.S. DOT FTA Best Practices Procurement Manual, section 1.3.3.4, Real Estate Contracts
- 36 U.S. DOT FTA Mater Agreement, section 19g (3)
- 37 U.S. DOT FTA Circular 4220.IF, Chapter VII
- 38 U.S. DOT FTA Circular 4220.IF, Chapter ill, 3b, and Appendix D
- 39 U.S. DOT FTA Circular 4220.IF, Chapter V, 7

- 40 U.S. DOT FTA Circular 4220.IF, Chapter V, 7a (2)
- 41 U.S. DOT FTA Circular 4220.IF, Chapter IV, 2e and U S DOT FTA Best Practices Procurement Manual, section 2.2.1, U.S. DOT FTA Master Agreement section 15n (2)
- 42 U.S. DOT Best Practices Procurement Manual, section 6.3.5, Warranties
- 43 U.S. DOT FTA Circular 4220.IF, Chapter IV, 2 b(5)(b) and U.S. DOT Best Practices Procurement Manual, section 2.4.4, Payments
- 44 U.S. DOT FTA Circular 4220.IF, Chapter IV, 2(b)(5)(b) and U.S. DOT FTA Best Practices Procurement Manual, section 2.4.4, Payments
- 45 U.S. DOT FTA Best Practices Procurement Manual, section 2.4.4.4, Withholding and Final Payment
- 46 U.S. DOT FTA Circular 4220.IF, Chapter II, 2 (b) (4) and U.S. DOT FTA Best Practices Procurement Manual, section 1.3.3.8, Revenue Contracts
- 47 U.S. DOT FTA Circular 4220.IF Chapter VI, 2 c (2)(c) and U.S. DOT FTA Best Practices Manual, section 2.4.3.3, Time and Materials Contracts
- 48 U.S. DOT FTA Circular 4220.IF, Chapter VI, 6 and U.S. DOT FTA Best Practices Procurement Manual, section 5.2, Cost and Price Analysis
- 49 U.S. DOT FTA Best Practices Procurement Manual, section 1.3.3.7, Equipment Leases and U.S. DOT FTA Circular 4220.IF, Chapter IV, 1e
- 50 U.S. DOT FTA Master Agreement, section 15n (4)
- 51 U.S DOT FTA Master Agreement, section 19h(2a) & (2b)
- 52 U.S. DOT FTA Circular 5010.10 Chapter IV, 3k (4)
- 53 U.S. DOT FTA Best Practices Procurement Manual, section 1.3.3.10, Disposition of Surplus