



**Procurement  
Policies and Procedures Manual**

**Adopted April, 2011, Revised October, 2019**

<b>INTRODUCTION</b> .....	<b>1</b>
<b>CHAPTER I - LEVELS OF APPROVAL</b> .....	<b>2</b>
<b>A Goods and Services</b> .....	<b>2</b>
<b>B Architectural and Engineering Services</b> .....	<b>2</b>
<b>C Public Works/Construction Projects</b> .....	<b>3</b>
<b>D Sole Source</b> .....	<b>3</b>
<b>E Emergency Procurement</b> .....	<b>3</b>
<b>F Change Orders and Amendments</b> .....	<b>3</b>
<b>G Informal Process</b> .....	<b>3</b>
<b>H Delegations</b> .....	<b>4</b>
<b>CHAPTER II – POLICIES</b> .....	<b>4</b>
<b>A Revision of Procurement Procedures</b> .....	<b>4</b>
<b>B Standards of Conduct and Conflict of Interest Policies</b> .....	<b>4</b>
1. Conflict of Interest .....	4
2. Gratuities, Kickbacks, and Contingent Fees.....	5
3. Confidential Information.....	5
4. Organizational Conflict of Interest.....	5
<b>C Vendor Policies</b> .....	<b>6</b>
1. Vendor Maintenance Form .....	6
2. System for Award Management.....	6
3. Tax Information. ....	6
4. Evidence of Liability Insurance. ....	6
5. E-Verify Contractor Affidavit.....	6
6. Vendor File. ....	7
<b>D Purchasing Policies</b> .....	<b>7</b>
1. Equal Employment Opportunity/Affirmative Action.....	7
2. Disadvantaged Business Enterprise .....	7
3. Debarred and Suspended Vendors .....	9
4. Cooperative Procurement.....	9
5. Open Competition Required.....	10
6. Efficient and Economic Purchases .....	10
7. Independent Cost or Price Estimates.....	10
8. Public Records Act.....	10
9. Term Limitations—Rolling Stock Procurements.....	11
10. Revenue Contracts.....	11
11. Escrow/Surety Deposits.....	11
<b>CHAPTER III – PROCUREMENT PROCEDURES</b> .....	<b>12</b>
<b>A Procurement by Micro-Purchases</b> .....	<b>13</b>
<b>B Small Purchases</b> .....	<b>14</b>
<b>C Invitation for Bids (IFB)</b> .....	<b>15</b>
1. General .....	15
2. Use .....	15
3. Scope of Work.....	16

4.	Issuance of IFB .....	16
5.	IFB Packet.....	17
6.	Control Record.....	17
7.	Pre-Bid Conference.....	18
8.	Addendum to Invitation for Bids.....	18
9.	Cancellation of IFB .....	19
10.	Receipt of Bids .....	19
11.	Withdrawal of Bids.....	19
12.	Bid Opening.....	20
13.	Recording of Bids.....	21
14.	Tabulation of Bids .....	21
15.	Mistakes in Bids .....	21
16.	Minor Irregularities in Bids .....	22
17.	Multiple or Alternate Bids .....	22
18.	Analysis of Limited Bid Response .....	23
19.	Determination of Responsiveness.....	23
20.	Responsible Bidder Evaluation.....	24
21.	Documentation of Responsibility & Responsiveness .....	26
22.	Rejection of All Bids .....	26
23.	Rejection of Individual Bids.....	27
24.	Award of the Contract .....	28
25.	Final Award .....	29
26.	Project Completion.....	29
<b>D.</b>	<b>Request for Proposals (RFP).....</b>	<b>30</b>
1.	General .....	30
2.	RFP Contents .....	30
3.	Issuance of RFP .....	30
4.	RFP Packet.....	31
5.	Control Record.....	32
6.	Pre-Proposal Conference.....	32
7.	Addenda to Requests for Proposals .....	33
8.	Cancellation of RFP .....	34
9.	Receipt of Proposals.....	34
10.	Withdrawal of Proposals .....	34
11.	Format of Proposal .....	34
12.	Determination of Responsiveness.....	35
13.	Responsible Proposer Evaluation .....	35
14.	Documentation of Responsibility & Responsiveness .....	37
15.	Evaluation of Proposals .....	38
16.	Discussions.....	39
17.	Request for Best and Final Offer .....	41
18.	Debriefing of Unsuccessful Proposers.....	41
19.	Award of the Contract .....	42
20.	Final Award .....	42
21.	Project Completion.....	43
<b>E.</b>	<b>Special Procedures for Architectural/Engineering Services .....</b>	<b>43</b>
1.	Competitive Negotiations.....	43
2.	Formal Solicitation Evaluation.....	44
<b>F.</b>	<b>Sole Source Procurements.....</b>	<b>46</b>
I.	Single Source .....	47
<b>G.</b>	<b>Single Bid or Proposal .....</b>	<b>48</b>
<b>H.</b>	<b>Emergency Procurements .....</b>	<b>49</b>

<b>I</b>	<b>Unsolicited Proposals</b> .....	<b>49</b>
<b>J</b>	<b>Amendments and Change Orders</b> .....	<b>51</b>
<b>K</b>	<b>Use of an Existing Contract</b> .....	<b>52</b>
	<b>PIGGYBACKING WORKSHEET</b> .....	<b>55</b>
<b>L</b>	<b>Options</b> .....	<b>56</b>
<b>M</b>	<b>Intergovernmental and Joint Procurement Agreements</b> .....	<b>56</b>
<b>N</b>	<b>Independent Cost Estimates</b> .....	<b>57</b>
	1. Construction Projects .....	57
	2. Non-Construction Projects .....	57
<b>O</b>	<b>Subchapter O - Price/Cost Analysis</b> .....	<b>58</b>
	1. Single Bid.....	58
	2. Evaluating Bid Price .....	58
	3. Evaluating Prospective Price.....	58
	4. Review of Contractor’s Cost or Price Data .....	58
	5. Cost vs. Price Analysis.....	58
	6. Conducting a Price Analysis .....	59
	7. Conducting a Cost Analysis .....	59
	8. Questions for Cost Analysis .....	60
	9. One Bid or Proposal .....	60
<b>P</b>	<b>Vehicle Purchasing Procedures</b> .....	<b>60</b>
	1. Purchases under \$150,000.....	60
	2. Purchase over \$150,000 .....	60
	3. DBE – TVM Certifications .....	61
	4. FTA DBE Approval Certification .....	61
	5. Pre-Award Report .....	61
	6. Post-Award Submission .....	64
	7. Post-Delivery Report and Delivery Documents .....	64
	<b>CHAPTER IV - PURCHASE ORDERS</b> .....	<b>68</b>
<b>A</b>	<b>Umbrella Purchase Orders</b> .....	<b>68</b>
<b>B</b>	<b>Blanket Purchase Orders</b> .....	<b>68</b>
<b>C</b>	<b>Individual Purchase Orders</b> .....	<b>68</b>
<b>D</b>	<b>Receipt of Goods/Services and Authorization to Pay</b> .....	<b>69</b>
	<b>CHAPTER V - VENDOR PROTEST PROCEDURES</b> .....	<b>70</b>
<b>A</b>	<b>Purpose</b> .....	<b>70</b>
<b>B</b>	<b>General</b> .....	<b>70</b>
<b>C</b>	<b>Definitions</b> .....	<b>70</b>
<b>D</b>	<b>Grounds for Protest</b> .....	<b>71</b>
<b>E</b>	<b>Contents of Protest</b> .....	<b>71</b>
<b>F</b>	<b>Timing Requirements and Categories of Protests</b> .....	<b>72</b>
<b>G</b>	<b>Review of Protest by CAT</b> .....	<b>72</b>
<b>H</b>	<b>Effects of Protest on Procurement Actions</b> .....	<b>73</b>

<b>I</b>	<b>Summary Dismissal of Protests</b> .....	<b>74</b>
<b>J</b>	<b>Protest Decisions</b> .....	<b>74</b>
<b>K</b>	<b>Judicial Appeals</b> .....	<b>74</b>
<b>CHAPTER VI - CONTRACT ADMINISTRATION</b> .....		<b>76</b>
<b>A</b>	<b>Contract Signatory Authority</b> .....	<b>76</b>
<b>B</b>	<b>Procurement Manager Contract Responsibilities</b> .....	<b>76</b>
1.	Contract Administration File.....	76
2.	Contract Procedures .....	76
3.	Contract PO & Payments .....	77
4.	Contract Options .....	77
<b>C</b>	<b>Project Manager Responsibilities</b> .....	<b>78</b>
1.	Contract Compliance.....	78
2.	Contract Monitoring.....	78
3.	Project Progress.....	78
<b>D</b>	<b>Federal Procurement Requirements</b> .....	<b>78</b>
<b>E</b>	<b>Bonding Requirements</b> .....	<b>82</b>
1.	Purpose.....	82
2.	Responsibility.....	82
3.	Types of Bonds .....	82
4.	Procedures .....	83
5.	Forfeiting of Bonds .....	83
<b>F</b>	<b>Insurance Requirements</b> .....	<b>84</b>
<b>G</b>	<b>Liquidated Damages</b> .....	<b>84</b>
<b>H</b>	<b>Indemnification</b> .....	<b>85</b>
<b>I</b>	<b>Termination for Convenience</b> .....	<b>85</b>
<b>J</b>	<b>Dispute Resolution</b> .....	<b>85</b>
<b>K</b>	<b>Project Control File</b> .....	<b>85</b>
<b>L</b>	<b>Vendor File</b> .....	<b>86</b>
<b>M</b>	<b>Types of Contracts and Payment Terms</b> .....	<b>87</b>

---

## CAT Procurement Policies and Procedures

---

### INTRODUCTION

Chatham Area Transit (CAT) has major responsibilities, which include the operation of a public transportation system and the planning, design and programming of transportation projects. All contracts are awarded by CAT by its own procurement office, which is responsible for identifying the needs of CAT and originating the procurement package for supplying those needs.

CAT receives funding from both the federal government and the state. Therefore, CAT adopts procurement policies and procedures that are consistent with federal regulations and the laws of the state of Georgia. These procedures apply to all procurements irrespective of the source of the funds. Specific requirements for procurements funded by the Federal Transit Administration are so identified. These procedures apply to any revenue contract whose primary purpose is to either generate revenues in connection with a transit-related activity, or to create business opportunities utilizing a Federal Transit Administration-funded asset.

The purpose of these policies and procedures is to set forth the procurement methods and establish standards for obtaining goods and services, including construction, professional, and Architectural/Engineering services necessary for the operation of CAT's transit service. These procedures include guidelines for the solicitation, award and administration of formally advertised contracts, as well as the consultant selection, negotiation, award and administration of competitively negotiated and Architectural/Engineering contracts.

The procurement procedures are designed to:

- Instill public confidence in the procurement process of CAT.
- Ensure fair and equitable treatment for all vendors who seek to deal with CAT.
- Ensure maximum open and free competition in the expenditure of public funds.
- Provide the safeguards to maintain a procurement system of quality and integrity.

The methods by which the foregoing are implemented are described in detail in the remainder of this document and the attachments hereto.

The procurement process is ongoing throughout the fiscal year. During budget preparation, each department head should identify, to the extent possible, all goods and services that will need to be procured during the upcoming fiscal year (July 1 - June 30).

## CHAPTER I - LEVELS OF APPROVAL

For all procurements, with the exception of those using the informal process there are two phases of the process that need to be approved:

- Issuance of the solicitation document
- Contract award

In this chapter the levels set forth apply to both the approval of the issuance of the solicitation document and the approval of the resulting contract.

### **A. Goods and Services**

The procurements of services, supplies, or other property, with the exception of Architectural and Engineering services and Blanket Purchase Orders.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$5,000	Micro Purchase	Department Directors
\$5,000 - \$20,000	Micro or Small Purchase	Executive Director
Greater than \$20,000	Small Purchase, RFP, IFB	Authority Board

Please note that Department Directors are not authorized to delegate their approval authority.

### **B. Architectural and Engineering Services**

Procurement of professional consultants for engineering, architectural, land surveying or other support services, such as program management, construction management, feasibility studies, preliminary engineering and design, which are directly related to, or lead to construction, alteration, or repair of real property and require performance by a registered or licensed architect or engineer.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$20,000	Qualifications-Based Procedures (Brooks Act)	Executive Director
\$5,000 - \$20,000	Qualifications-Based Procedures (Brooks Act)	Authority Board
Greater than \$20,000	RFP with Qualifications-Based Procedures (Brooks Act)	Authority Board

**C. Public Works/Construction Projects**

Procurements of labor and/or materials for construction or public works projects.

<i>Price Threshold</i>	<i>Method of Procurement</i>	<i>Required Approval Level</i>
Less than \$5,000	Micro Purchase	Department Directors
\$10,000 - \$20,000	Micro or Small Purchase	Executive Director
\$20,000 - \$250,000	Small Purchase	Authority Board
>\$250,000	IFB	Authority Board

**D. Sole Source**

Procurement accomplished through solicitation or acceptance of a proposal from only one available source or solicitation of a number of sources in which competition is determined inadequate. Sole Source procurements require a Sole Source Determination by the Procurement Manager and approval by the Executive Director. The required approval level for the procurement itself remains consistent with the required procurement approval level prescribed in these procedures.

**E. Emergency Procurement**

A procurement made to fill an immediate, unexpected need when there is insufficient time to procure by open competition. Requests for emergency procurements will be handled immediately and expedited as required. The Executive Director has the authority to approve the purchase of all goods and services in emergency conditions. If the Executive Director is unavailable to authorize an emergency procurement, the Chief Financial Officer may provide the necessary authorization.

The department seeking an emergency procurement will provide the Procurement Manager with a Memorandum of Emergency Procurement. The Procurement Manager will review the Memorandum and make a recommendation to the Executive Director regarding whether the procurement qualifies as an Emergency Procurement. The Executive Director will authorize or deny the procurement. The Procurement Manager will document the emergency actions taken and the appropriate approval of said actions. This documentation will be saved in the procurement file.

**F. Change Orders and Amendments**

Any substantive, non-clerical, amendments and/or individual change orders will be approved by the Board.

**G. Informal Process**

An informal process will be used for normal and customary operating cost. Costs associated with operations are approved annually by the Board through adoption of the CAT Operating Budget. These cost can be approved by the Executive Director as they

occur. Examples of these types of reoccurring expenses include fixed route fuel, ferry boat fuel, contract services for customary repairs and maintenance and other ordinary business cost incurred.

#### **H. Delegations**

Except as otherwise provided in these procedures, all rights, powers, duties and authorities relating to the procurement of supplies, services and construction vested in the Executive Director may be delegated to the Deputy Executive Director. Except as provided in these procedures, all rights, powers, duties and authorities delegated to the Deputy Executive Director may be, in turn, delegated to the Chief Financial Officer.

The Authority Board is specifically authorized to execute approval authorization at any level.

The Executive Director and/or the Deputy Executive Director are specifically authorized to execute approvals delegated to the Chief Financial Officer.

### **CHAPTER II – POLICIES**

CAT is governed by a nine-member Authority Board. Among other duties, CAT’s Board is responsible for establishing policies which guide the operation of CAT. It is in that capacity that the Board adopted a set of procurement policies. These policies serve as a base upon which procurement procedures can be developed.

CAT’s Board has adopted related policies which serve to guide procurement activities. Those policies are summarized in this Section.

#### **A. Revision of Procurement Procedures**

The Procurement Manager, with oversight of the Chief Financial Officer, is responsible for updating and clarifying these procurement procedures on an as-needed basis. All substantive changes to procurement policies shall be reviewed and approved by the Authority Board.

#### **B. Standards of Conduct and Conflict of Interest Policies**

There will be uniform and equitable application of the Standards of Conduct of CAT involving all activities associated with the procurement of goods and services. This section defines responsibility to identify and prevent a real or apparent conflict of interest.

##### **1. Conflict of Interest**

No Board member, employee, officer, agent, or management consulting staff of CAT, nor any of his or her immediate family, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award. In cases where there may be a benefit, either direct or indirect, there is a responsibility to report in writing such benefit to the Board. If anyone fails to report such benefit, he or she will be subject to any disciplinary proceeding deemed appropriate by the Board, including possible dismissal and/or legal action.

Board members, employees, officers, agents, and management consulting staff of CAT shall be subject to the conflict of interest laws of the state of Georgia. Anyone who violates the standards of the law shall be subject to the penalties, sanctions or other disciplinary actions provided for therein.

2. Gratuities, Kickbacks, and Contingent Fees

No Board member, employee, officer, agent, nor management consulting staff of CAT shall solicit, demand or accept from any person, contractor, potential contractor, or potential subcontractors, anything of a monetary value, including gifts, gratuities and favors. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by CAT's Executive Director, including possible dismissal and/or legal action.

3. Confidential Information

No Board member, employee, officer, agent, nor management consulting staff of CAT shall use confidential information for his or her actual or anticipated personal gain, or the actual or anticipated personal gain of any other person related to them by blood, marriage, or by common commercial or financial interest. Anyone failing to adhere to the above will be subject to any disciplinary proceeding deemed appropriate by CAT's Executive Director, including possible dismissal and/or legal action.

4. Organizational Conflict of Interest

Each entity that enters into a contract with CAT is required, prior to entering into such contract, to inform CAT of any real or apparent organizational conflict of interest. Such organizational conflict of interest exists when any of the following circumstances arise:

- a. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to CAT due to other activities,

relationships, contracts, or circumstances.

- b. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- c. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

Procurement staff will analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

### **C. Vendor Policies**

1. Vendor Maintenance Form. The CAT Vendor Maintenance Form shall be utilized to set-up new vendors and to make any changes to existing vendors. The form must be reviewed and signed by the Procurement Manager. An accounting employee shall be responsible for entering the vendor information into CAT's financial management system. The Vendor Maintenance Form shall be signed by the employee entering the information into CAT's financial management system as well as the Director of Finance.
2. System for Award Management. A search of the System for Award Management (SAM) shall be conducted to ensure that the vendor is not debarred or suspended from participating in federally funded programs. A print-out of the SAM search results will be maintained in the vendor file.
3. Tax Information. A vendor must provide a W9 form to CAT in order to be entered into CAT's financial management system.
4. Evidence of Liability Insurance. All vendors engaged in the physical performance of services on CAT's premises, shall provide documentation of Commercial General/Professional Liability insurance providing insurance for bodily injury, property damage, personal injury and advertising injury, with limits of not less than \$1,000,000. This documentation shall be maintained in the vendor file.
5. E-Verify Contractor Affidavit. Any vendor engaged in the physical performance of services on CAT's premises, shall complete an E-Verify Contractor Affidavit as required by O.C.G.A. § 13-10-91(b)(1). This affidavit shall be maintained in the vendor file.

6. Vendor File. A vendor file shall be maintained for each vendor and shall include the following:
  - i. Completed and fully signed Vendor Maintenance Form;
  - ii. W9 Form;
  - iii. Print-out of SAM search results;
  - iv. Documentation of initiator of request for vendor creation or information change;
  - v. Evidence of liability insurance, if applicable; and
  - vi. Fully executed E-Verify Contractor Affidavit, if applicable.

**D. Purchasing Policies**

1. Equal Employment Opportunity/Affirmative Action

All procurement documents issued by CAT require all interested vendors to certify:

- a. That the vendor and any subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments;(2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.
- b. That the vendor is in compliance with all Executive Orders and federal, state and local laws regarding fair employment practices and non-discrimination in employment; and
- c. That the vendor agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

2. Disadvantaged Business Enterprise

- a. Disadvantaged Business Enterprise (DBE) means a for-profit small business that is:
  1. At least 51 percent owned by one or more individuals who are socially or economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
  2. Whose management and daily operations are controlled by one or more of the socially and economically

disadvantaged individuals who own it.

b. General Policy

The Board of CAT has determined as a matter of policy that whenever Federal funds are used to support a procurement, disadvantaged business enterprises (DBEs), as defined in 49 C.F.R. Part 26, shall have the opportunity to compete fairly for contracts financed in whole or in part with Federal funds. Accordingly, and as required by 49 C.F.R. Section 26.13, each prime contract signed by CAT (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CAT deems appropriate.

c. Contract Goals

CAT's DBE Liaison shall be responsible for determining whether to establish a DBE goal for each federally-assisted contract. The setting of DBE contract goals shall be consistent with the provisions of 49 C.F.R. §§ 26.51(c) through (f).

d. Contractor Compliance

Proposers and bidders must take necessary and reasonable steps to ensure that DBEs have a fair opportunity to participate in the proposed contract and/or subcontracts. If a proposer or bidder qualifies as a certified DBE or is joint venturing with a certified DBE, a copy of the DBE certification(s), and a description of the dollar value of the proposed work that it intends to perform with its own forces, together with a statement of the percentage interest in the contract held by a joint venture DBE, must be submitted with its proposal or bid. If a proposer or bidder intends to utilize DBE subcontractors, it must identify the subcontractors in its proposal or bid and set forth the percentage value of the work to be performed by the subcontractors utilizing the "Designation of Subcontractors" and "Designation of DBE Subcontractors" forms which are included with each

invitation for bids or request for proposals, as appropriate.

In the event that CAT has established a DBE goal for a contract, each proposer or bidder must, prior to contract award, document that it has obtained sufficient DBE participation to meet the contract's goal or document that it has made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. In instances in which DBE subcontractors are utilized to meet a contract goal, a successful proposer will be required to submit documentation with its initial proposal as a matter of responsibility and a bidder will be required to submit documentation with its sealed bid as a matter of responsiveness. In addition to the information on the "Designation of DBE Subcontractors" form, this documentation must include (1) written documentation of the proposer's or bidder's commitment to use identified DBEs; and (2) written confirmation from the DBE that it is participating in the contract.

e. Good Faith Efforts

When a proposer or bidder indicates that it cannot meet a contract goal, its submitted documentation must also include evidence of good faith efforts undertaken by the proposer or bidder to achieve DBE participation sufficient to meet the goal. For purposes of determining the adequacy of those efforts CAT shall be guided by Appendix A to 49 C.F.R. Part 26.

f. Tracking Participation

CAT shall require contractors to submit monthly reports identifying payments made to DBE firms.

3. Debarred and Suspended Vendors

For any purchase above \$25,000, a search of the System for Award Management website will be conducted to ensure that the vendor is not listed as debarred or suspended from participating in federally funded programs. A copy of the search results will be maintained in the procurement file.

4. Cooperative Procurement

When circumstances warrant, CAT may attempt to fill requirements through a cooperative purchasing agreement with the State of Georgia, the County of Chatham, or with other appropriate public agencies.

5. Open Competition Required

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include, but are not limited to:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business.
- b. Unnecessary experience and excessive bonding requirements.
- c. Noncompetitive pricing practices between firms or between affiliated companies.
- d. Noncompetitive award to any person or firm on retainer contracts.
- e. The specification of only a brand name product without listing its salient characteristics and not allowing an equal product to be offered.
- f. Exclusionary or discriminatory specifications.
- g. Any arbitrary action in the procurement process.

6. Efficient and Economic Purchases

CAT's procurement personnel will review all proposed procurements to ensure that there are no purchases of unnecessary or duplicative items and to determine whether it is necessary and/or appropriate to consider consolidating or breaking out procurements to obtain more economical purchases. The procurement staff will, in consultation with the Chief Financial Officer, examine major procurements to determine if it is in CAT's best interest to enter into a capital lease rather than to make a purchase.

7. Independent Cost or Price Estimates

The procurement staff will ensure that an independent cost or price estimate is established before a bid or proposal is received by CAT. For the purposes of compliance with this policy, CAT will utilize independent "engineer's estimates" prepared by its Architectural and Engineering consultants for all construction projects.

8. Public Records Act

All bids and proposals received become the exclusive property of CAT. At such time as a contract award is approved or recommended for approval to the Board, all bids and proposals become a matter of public record and shall be regarded as public records. Except for financial information provided for financial responsibility determination purposes, which is accompanied by an attached affidavit pursuant to Article 2 of Chapter 1 of Title 10, Official Code of Georgia, CAT cannot accept any material marked confidential, trade secret or proprietary. CAT shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, with limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids or proposals that indiscriminately identify all or most of the bid or proposal as exempt from disclosure without justification may be found technically unacceptable.

9. Term Limitations—Rolling Stock Procurements

The procurement staff will ensure that the term of rolling stock and replacement part procurements, including the exercise of options, funded with Federal funds will not exceed five (5) years. All other contracts will have a term based on good business judgement and will be no longer than necessary to accomplish the purpose of the contract.

10. Revenue Contracts

Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing a FTA funded asset. Any revenue contract awarded by CAT will be awarded utilizing competitive selection procedures and principles.

With the exception of certain advertising agreements and discounted fare media/bus passes containing revenue sharing provisions, CAT does not enter into any revenue producing contracts. Contracts with local municipalities, wherein, CAT is reimbursed for goods and/or services provided are not considered revenue contracts.

11. Escrow/Surety Deposits

When it becomes necessary for CAT to place funds in excess of \$500,000 into an escrow account or other form of performance security for the purchase of land, buildings and other major assets, CAT will require the agency holding and or requesting these funds to guarantee interest.

## **CHAPTER III – PROCUREMENT PROCEDURES**

**A. Procurement by Micro-Purchases**

Procurements that are less than the federal micro purchase limit, currently \$10,000, can be made without obtaining competitive quotations if it is determined that the price is fair and reasonable. A description of how this fair and reasonable determination was made shall be included as part of the requisition process. CAT's cost principles for determining reasonable price are consistent with Federal cost principles. The splitting of procurements to avoid competition is prohibited, and procurement staff will review and approve all micro purchases to ensure that prohibited splitting of procurements has not taken place. Davis Bacon prevailing wage and hour restrictions apply to construction contracts exceeding \$2,000.

## **B. Small Purchases**

For procurements between \$10,000 and the federal simplified acquisition threshold, currently up to \$250,000, written price or rate quotations from an adequate number of qualified sources must be obtained. The responsibility for soliciting quotations rests with the department seeking the procurement. CAT's cost principles for determining reasonable price are consistent with Federal cost principles. Appropriate documentation, including the quotes received and a determination that the price is fair and reasonable shall be included with the requisition. If the lowest bidder is not chosen, the documentation will include justification for the selection of other than the lowest bidder.

Federal clause provisions identified in Ch. VI(B) of these procedures will be included in all FTA-funded procurements. Davis Bacon prevailing wage and hour restrictions apply to construction contracts exceeding \$2,000.

## C. Invitation for Bids (IFB)

### 1. General

The Invitation for Bids (IFB) competitive procurement process is used for public works/construction projects, and, if appropriate, the purchases of goods and services whose cumulative value will exceed the federal acquisition threshold, currently \$250,000.. The IFB process may be used for small purchases between \$20,000 and \$250,000. The IFB process is coordinated by the procurement staff. For procurements greater than \$100,000, contracts will contain remedies for breach.

### 2. Use

The IFB method of procurement is employed when the following circumstances are present:

- a. Precise Specifications. A complete, adequate, precise, and realistic specification or purchase description is available.
- b. Adequate Sources. Two or more responsible suppliers are willing and able to compete effectively for the contract.
- c. Fixed Price Contract. The procurement lends itself to a firm, fixed-price contract. A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.
- d. Price Determinative. Selection of the successful bidder can be made on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
- e. Discussions Unnecessary. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary because award of the contract will be made based on price and price-related factors alone.

### 3. Scope of Work

The Project Manager shall provide the procurement staff with the Scope of Work and specifications for the solicitation. The following general rules apply to scopes of work and specifications:

- a. A common basis for bidding must be provided. Specifications and scopes of work should set out the minimum essential characteristics and standards of the items or services to be procured. Whenever possible, the expected quality of services to be provided or the performance characteristics of the item should be specified.
- b. Specifications and scopes of work should not call for features or quality levels which are not necessary to meet the bid requirements.
- c. All optional items should be identified by the Project Manager, and the solicitation documents should set forth the expected needs and the manner in which the related bid prices will be considered.
- d. In order to foster free and open competition, specifications may not require a “brand name” product without allowing an “or equal” product to be offered. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the goods or services required, a “brand name or equal” description may be used to define the performance or other salient characteristics of the goods or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of “an equal” bid must be clearly stated.
- e. Because standard specifications and requirements allow for more efficient operations and result in lower prices, they should be used wherever suitable. Maximum use should be made of industry, federal, state and local government specifications and requirements.

### 4. Issuance of IFB

For any project that is estimated to cost over \$20,000, the Board must approve the issuance of an Invitation for Bids (IFB). The procurement staff shall prepare the Board Report seeking approval of the issuance of the IFB. All IFBs will be prepared by the procurement staff, will be advertised on CAT’s web-site, and, must be published in a newspaper of general circulation and trade publications, in sufficient time prior to the date set for bid closing. In addition to notice on website and in local news publications and trade publications, CAT will directly notify known qualified vendors of procurement opportunity and provide known potential bidders sufficient time to prepare bids prior to the date set for opening of bids. The reasons for any rejected bid will be documented and

become part of the procurement record. The notice must include the following minimum information:

- a. A general description of the services or goods to be purchased.
- b. Where to receive an IFB.
- c. The location, day and time of the Pre-Bid Conference (If one is scheduled).
- d. The location, last day and hour bids will be accepted (deadline).
- e. Bid Acceptance Period.
- f. Whether Federal funds are being used for the procurement.

5. IFB Packet

The procurement staff will coordinate the release of the IFB packet. The IFB packet will include the following:

- a. Instructions To Bidders – General instructions concerning the bid format, pre-contractual expenses, contract conditions, pre-bid conferences, and other information.
- b. Submittal Documents – Required forms to be complete by the bidder and submitted with the bid.
- c. Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the bidders to properly respond to the IFB.
- d. General Terms and Conditions.
- e. Special Terms and Conditions – Provisions unique to each IFB, if applicable, will be included (e.g., special terms of the resulting contract; any modifications to general terms and conditions; milestones; and special payments procedures).

6. Control Record

- a. A control record will be maintained by the procurement staff as IFB packets are distributed to prospective bidders. The control record profiles the following information:
  - i. Date and time IFB packets are distributed.
  - ii. Names and addresses of bidders receiving bid invitations and attending pre-bid conferences.
- b. The control record has two primary purposes:

- i. Serves as a mailing list for the issuance of addenda.
- ii. Provides a record for verification in cases of vendor protests and other issues.

7. Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. The pre-bid conference will not be used as a substitute for amending a defective or ambiguous invitation. Unless otherwise specified in the IFB documents, attendance by potential bidders is not mandatory. Answers to any posed questions will be issued to prospective bidders before the bid due date.

The pre-bid conference shall be chaired by the Procurement Manager, and shall follow the format below:

- a. Discussion on basic requirements such as instructions to the bidders, funding, contract type, and specific points that should be addressed in each proposal.
- b. Discussion on the participation requirements for disadvantaged business enterprises (DBE) if applicable.
- c. Discussion on the scope of work and have the Project Manager available to answer technical questions.
- d. Provide project schedule.

8. Addendum to Invitation for Bids

If after issuance of an IFB, but before the time set for opening of bids, it becomes necessary to make changes in quantities, specifications, opening dates, etc., or to correct or clarify a defective or ambiguous IFB, such changes shall be accomplished by the issuance, in writing, of an addendum to the IFB. Before issuing an addendum to an IFB, the period of time remaining until the time set for bid submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective bidders of an extension of time by email, facsimile or telephone. Such extension of time should be confirmed in the addendum. The addendum shall be sent to each prospective bidder to whom the IFB was furnished or to any prospective bidder who attended any site visit and/or pre-bid conference and shall provide:

- a. Addendum number and date.
- b. Number, date and the title of the IFB concerned.
- c. Clearly stated changes made in the IFB and the extension of the opening date, if applicable.

- d. Instructions to bidders for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge and return the addendum.

9. Cancellation of IFB

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

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

If the invitation for bids is canceled before the time for bid openings, this fact shall be recorded in the control file, with a statement of the number of entities invited to bid and the number of bids received.

10. Receipt of Bids

Bids shall be submitted so as to be received at the location designated in the invitation for bids not later than the exact time set for the receipt of bids. The only acceptable evidence to establish the time of receipt at CAT's offices is the time/date stamp of CAT, which shall be placed on the bid wrapper immediately upon receipt. The CAT staff person receiving the bid shall sign the exterior of the bid package to verify the date and time received and person receiving the bid. The timeliness of bids is the sole responsibility of the bidder.

11. Withdrawal of Bids

Any bidder may withdraw their bid, either personally or by written request, received by CAT, at any time prior to the time fixed for the receipt of the bids. Negligence on the part of Bidders in preparing their bid confers no right of withdrawal of their bid after such bid has been opened. No bid may be withdrawn after the time specifically set forth in each invitation for bids.

## 12. Bid Opening

Upon receiving the bids, it is the procurement staff's responsibility to record their receipt and keep them unopened and secure, except as stated below.

Prior to bid opening, information concerning the identity and number of bids received shall be made available only to CAT representatives who have a proper need for such information, as determined by the procurement staff.

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

The procurement staff shall decide when the time set for bid opening has arrived and shall so declare to those present.

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

A second CAT representative shall be present to witness the opening and reading of the bids and, along with the Procurement Manager, shall sign the recording document to verify its accuracy.

The original of each bid shall be carefully safeguarded, particularly until the abstract of bids has been made and its accuracy verified. The reasons for any rejected bid will be documented and become part of the procurement record.

The original bid form shall not be allowed to pass out of the hands of the procurement staff. The original bids may not be removed from the office except for official review and evaluation by CAT legal counsel, in which case, a copy of each bid must be maintained in CAT's procurement files in lieu of such originals for the interim period.

All bids will be open to public review after award has been made. All bids, including attachments and copies of envelopes, shall be retained for the official files.

13. Recording of Bids

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

The official record shall be completed as soon as practical after bids have been opened and read aloud. The procurement staff shall be responsible for maintaining files of these records and abstracts.

The file of the invitation for bids shall show the distribution that was made and the date thereof. The names and addresses of prospective bidders requesting the invitation for bids who were not included on the original solicitation list shall be added and made a part of the record.

14. Tabulation of Bids

Bids shall be evaluated on the basis of responsiveness and responsibility indicated in the Invitation for Bids. Award shall be made to the bidder submitting the lowest bid, unless CAT determines that the bid is not responsive and/or the bidder is found to be not responsible.

15. Mistakes in Bids

- a. General. Technicalities or minor irregularities in bids are waived if the Procurement Manager determines that it shall be in CAT's best interest. The Procurement Manager shall either give a bidder an opportunity to cure any deficiency resulting from a technicality or minor irregularity in its bid, or waive the deficiency if it is to CAT's advantage to do so.
- b. Mathematical Errors. Errors in extension of unit prices or in mathematical calculations shall be corrected by CAT prior to award. In all cases of errors in mathematical computation, the unit prices shall not be changed.
- c. Mistakes Discovered Before Opening. A bidder can correct mistakes discovered before the time and date set for bid opening by withdrawing the original bid and submitting a new bid prior to the time and date set forth for bid opening.
- d. Confirmation of Bid. If the Procurement Manager knows or has reason to conclude that a mistake has been made, the bidder shall be

requested to confirm the bid. Situations in which confirmation will be requested include obvious, apparent errors on the face of the bid, or a bid unreasonably lower than the other bids submitted. If the bidder alleges mistake, the bid will be corrected or withdrawn if any of the following conditions are met:

- iii. If the mistake and the intended correction are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and must not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
- iv. A bidder will be permitted to withdraw a low bid if:
  - i. A mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
  - ii. The bidder submits proof of evidential value, which clearly and convincingly demonstrates that a mistake was made.
- v. Determination Required. When a bid is corrected or withdrawn, or correction or withdrawal is denied, the procurement staff shall prepare a determination showing that the relief was granted or denied.

16. Minor Irregularities in Bids

- a. A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation in a bid from the exact requirement of the solicitation. If such a situation exists, the correction of the irregularity or waiver of the requirement will be made if it would not be prejudicial to other bidders.
- b. A defect or variation in a bid is considered immaterial and inconsequential when its significance as to price, quantity, quality or delivery is trivial.
- c. The procurement staff shall either give the bidder an opportunity to cure any deficiency resulting from minor informality or irregularity in a bid, or waive the deficiency, whichever is to the advantage of CAT.

17. Multiple or Alternate Bids

Unless multiple or alternate bids are requested in the solicitation, these bids

will not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder. These provisions shall be set forth in the solicitation and, if multiple or alternate bids are allowed, it shall specify their treatments.

18. Analysis of Limited Bid Response

If less than two bids have been received, the procurement staff may examine the reasons for the small number of bids received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising. A price or cost analysis may be performed to establish the reasonableness of the bid price before an award is made.

19. Determination of Responsiveness

- a. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
- b. A bid shall be rejected when the bidder imposes conditions, which modify requirements of the invitation for bids. Bids may be rejected in cases, including but not limited to those in which the bidder:
  - i. Attempts to protect itself against future changes in conditions such as increased costs, if a total price to CAT cannot be determined for bid evaluation.
  - ii. Fails to state a price and in lieu thereof states that price shall be “price in effect at time of delivery“.
  - iii. States a price but qualifies such price as being subject to “price in effect at time of delivery“.
  - iv. Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
  - v. Limits rights of CAT under any contract clause.
  - vi. Fails to comply with all of the requirements of the IFB.
  - vii. Fails to furnish a bid bond in accordance with the requirement of the invitation for bids.

- c. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.
- d. After submitting a bid, if a bidder transfers all of his assets or the part of his assets related to the bid during the period between the bid opening and the award, CAT may accept or reject the bid at its sole discretion.

20. Responsible Bidder Evaluation

- a. Before awarding the contract, CAT shall determine that a prospective contractor is responsible and that prices are reasonable. Bidders may be asked to provide any information required to determine the responsibility of the bidder. A responsible bidder is one who meets the standards set forth below:
  - i. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
  - ii. Has a satisfactory record of integrity and business ethics.
  - iii. Is neither debarred nor suspended from State or Federal programs.
  - iv. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.
  - v. Is in compliance with applicable licensing and tax laws and regulations.
  - vi. Has a satisfactory record of performance. The contractor must have sufficient key personnel with adequate experience, a parent firm (if appropriate) with adequate resources and experience, and key subcontractors with adequate experience and past performance. The contractor must have sufficient past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in CAT's solicitation. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered is presumed to be non-responsible. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
  - vii. Is otherwise qualified and eligible to receive an award under applicable laws and regulations. In addition, the contractor's integrity

and compliance with public policy will be examined.

- viii. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
  - ix. Has the necessary production, construction, and technical resources, equipment and facilities, or the ability to obtain them.
- b. Evaluation of the responsibility of prospective contractors may be made based upon the following sources:
- i. A list of debarred, suspended or ineligible firms or individuals. The System for Award Management (SAM) will be examined to determine if a prospective contractor has been debarred or suspended.
  - ii. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
  - iii. Publications, including credit ratings, trade and financial journals, and business directories and registers may also be used.
  - iv. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
  - v. Documented past performance on contracts with CAT.
  - vi. Appropriate websites containing information concerning the responsibility of prospective contractors.
  - vii. If appropriate, it will be determined, through utilization of the Georgia State Licensing Board website, whether a prospective contractor possesses required licenses.
  - viii. If appropriate, prospective contractors will be required to provide financial information to determine if the contractor has financial resources adequate to perform the contract, or the ability to obtain them.
  - ix. The past performance of prospective contractors will be checked by

contacting references using a list of standard questions, and responses will be documented.

- x. In certain cases, such as bus procurements, site visits will be conducted to validate the manufacturing capabilities of the prospective contractor.

- c. Procurement personnel will be responsible for preparing the responsibility findings and will ensure that documentation of the findings is included in the procurement file.

- d. Procurement personnel will ensure that no contract is recommended for award nor executed until the contractor has been determined to be responsible.

- e. Procurement personnel will document any rejected bids and include the reason for rejection.

21. Documentation of Responsibility & Responsiveness

- a. Procurement staff shall use the Responsibility & Responsiveness Determination checklist form to create a record supporting the responsibility determination of each bid and the determination of the responsiveness of each bidder. The Responsibility & Responsiveness Determination form shall require Procurement Staff to confirm the receipt of signed federal clauses pertinent to the IFB.

22. Rejection of All Bids

- a. Any time prior to the bid opening date and time, CAT may cancel or postpone the bid opening, or cancel the IFB in its entirety.

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

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

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

- e. Invitations for bids may be canceled after opening but prior to award, and all bids rejected, where it is consistent with Federal and State procurement regulations. A written determination must be included in the invitation for bid file stating that cancellation is in the best interest of CAT for reasons such as the following:
  - i. Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.
  - ii. The supplies or services are no longer required.
  - iii. The invitation for bids did not provide for consideration of all factors of cost to CAT.
  - iv. Bids received indicate that the needs of CAT can be satisfied by a less expensive item differing from that on which bids were received.
  - v. All otherwise acceptable bids received are at unreasonable prices.
  - vi. The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. Such situation must be substantiated and reported to CAT's legal counsel.
  - vii. The bids received did not provide competition which was adequate to ensure reasonable prices. A price or cost analysis may be used to establish the reasonableness of prices.
- f. When it is determined to reject all bids, CAT shall notify each bidder that all bids have been rejected and state the reason for such action.

23. Rejection of Individual Bids

- a. Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, warranty, or the required bid documents, shall be rejected as non-responsive.
- b. A bid shall be rejected where the bidder imposes conditions which modify requirements of the invitation for bids. For example, bids may be rejected in which the bidder:
  - i. Attempts to protect himself against future changes in conditions such as increased costs, if a total price to CAT cannot be determined for bid evaluation.

- ii. Fails to state a price and in lieu thereof states that price shall be “price in effect at time of delivery”.
  - iii. States a price but qualifies such price as being subject to “price in effect at time of delivery”.
  - iv. Where not authorized by the invitation for bid, conditions or qualifies the bid by stipulating that the bid is to be considered only if, prior to date of award, bidder received (or does not receive) award under a separate procurement.
  - v. Limits rights of CAT under any contract clause.
  - vi. Fails to comply with all of the requirements of the IFB.
  - vii. Bids received from any person or firm debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired.
  - viii. Low bids received from firms determined to be not responsible pursuant to Federal or State procurement regulations shall be rejected in accordance with the procedures set forth in this Chapter.
  - ix. A bid may be rejected if a bid guarantee is required and a bidder fails to furnish it in accordance with the requirement of the invitation for bids.
  - x. The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved in the file relating to the procurement.
  - xi. After submitting a bid, if a bidder transfers all of his assets or that part of his assets related to the bid during the period between the bid opening and the award, the transferee may not take over the bid, thus CAT may reject the bid.
- c. Procurement personnel will document any rejected bids and include the reason for rejection.

24. Award of the Contract

Unless all bids are rejected, award shall be by written notice, within the time for acceptance specified in the bid or extension thereof, to the responsible and responsive bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

When award is made to other than the lowest bidder, the lowest bidder will be notified in writing by CAT of any evidence reflecting upon the responsibility of the bidder and affording the bidder the opportunity to rebut such evidence and present evidence of qualifications to perform the contract.

Notice of award shall be made by over-night delivery, email, or facsimile to the successful bidder. In addition, CAT will notify all unsuccessful bidders of its intent to award a contract to the successful bidder at the same time it notifies the successful bidder if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required. Notification to unsuccessful bidders will be made by over-night delivery, email, or facsimile.

25. Final Award

If Board approval is required for the selection of the contractor, the procurement staff and the Project Manager will prepare the board report that identifies all bidders responding to the IFB, and describes the procurement and bid evaluation processes. The board report should describe the services or goods being procured.

A contract form approved by legal counsel will be utilized and the Procurement Manager will ensure that the contract is executed at the approval level required in these procedures. The Contract may be executed electronically in one or more identical counterparts, each of which shall be deemed to be an original for all purposes, and all of which taken together shall constitute a single instrument.

26. Project Completion

All original documentation related to each procurement such as the IFB, Bid, control file, board report, background data, evaluation criteria and scores, meeting reports/notes, as well as the logs documenting bid opening dates and bid receipt dates will be submitted to the Chief Financial Officer for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of three years after the project is closed out and completed unless a different time period is mandated by a funding entity.

## **D. Request for Proposals (RFP)**

### **1. General**

The Request for Proposals (RFP) process is used in the procurement of architectural and engineering services (see Section E, subsection c, item iii for special procurement for A/E services) and when conditions are not appropriate for the use of an IFB. The latter is generally the case when the goods or services to be acquired 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. RFPs are generally used for the purchase of services such as lease agreements, maintenance and service contracts, rental contracts and professional service contracts. The RFP process is coordinated by procurement personnel.

### **2. RFP Contents**

The RFP process is a competitive negotiated procurement process that requires evaluation of offeror's proposed costs and understanding of the contract performance requirements in accordance with established evaluation criteria. The competitive negotiated procurement process does not require award to the lowest offeror. An RFP generally includes:

- a. Project background.
- b. Purpose of the engagement.
- c. General firm qualifications desired.
- d. Scope of work.
- e. Project schedule.
- f. Proposal requirements.
- g. Criteria for selection.
- h. Payment terms.

### **3. Issuance of RFP**

For any project that is estimated to cost over \$20,000, the Board must approve the issuance of a Request for Proposals (RFP). The procurement staff shall prepare the Board Report seeking approval of the issuance of the RFP. All RFPs will be prepared by the procurement staff, will be advertised on CAT's web-site, and, must be published in a newspaper of general circulation and trade publications, in sufficient time prior to the date set for receipt of proposals. The procurement staff will ensure that the RFP is made available to an adequate number of qualified sources to ensure fair and open competition. The notice must include the following minimum information:

- a. A general description of the services or goods to be purchased.
- b. Where to receive an RFP.
- c. The location, day and time of the Pre-Proposal Conference (If one is held).
- d. The location, last day and hour proposals will be accepted (deadline).
- e. Whether Federal funds are being used for the procurement.
- f. Evaluation Factors
- g. Information regarding the basis for award of contract.

4. RFP Packet

Procurement personnel will coordinate the release of the RFP packet. The RFP packet will include the following:

- a. Instructions To Proposers - General instructions concerning the proposal format, pre-contractual expenses, contract conditions, pre-proposal conferences, and other information.
- b. Attachments - Required forms to be completed by the proposer and submitted with the proposal.
- c. Exhibits - These can be documents which display key facts, specifications, maps, report formats, and other important information to clearly define the goods or services needed in order for the proposers to properly respond to the RFP.
- d. Scope of Work - Each RFP will contain a statement or scope of work prepared by the Project Manager which provides a clear and accurate description of the technical requirements for the materials, products, or services being produced. A statement or scope of work should only state the actual minimum needs of CAT, and be developed in a manner designed to promote full and open competition. At a minimum, the statement or scope of work should address the following areas:
  - i. The specific objectives of the proposed work.
  - ii. A detailed description of the work to be performed outlining various tasks or phases of work, and defining the limits of the proposed project.
  - iii. A requirement for periodic reporting or progress on the project if the procurement involves consultant or professional services.
  - iv. If applicable, a proposed delivery schedule
  - v. A proposed contract period.

5. Control Record

- a. A control record will be maintained by the procurement staff as RFP packets are distributed to prospective proposers. The control record profiles the following information:
  - i. Date and time RFP packets are distributed.
  - ii. Names and addresses of vendors receiving the RFP and attending any pre-proposal conference.
- b. The control record has two primary purposes:
  - i. Serves as a mailing list for the issuance of addenda.
  - ii. Provides a record for verification in cases of vendor protests and other issues.

6. Pre-Proposal Conference

- a. A pre-proposal conference may be used as a means of briefing prospective proposers and explaining complicated specifications and requirements to them as early as possible after the RFP has been issued and before the proposals are received. The pre-proposal conference will not be used as a substitute for amending a defective or ambiguous RFP. Unless otherwise stated in RFP documents, attendance by prospective proposers is not mandatory. Minutes of the conference and the list of attendees will be issued to all prospective proposers before bid due date.
- b. The pre-proposal conference shall be chaired by the Procurement Manager, and shall follow the format below:
  - i. Discuss basic requirements such as instructions to the proposers, funding, contract type, evaluation criteria, and specific points that should be addressed in each proposal.
  - ii. Discuss the participation requirements for disadvantaged business enterprises (DBE) if applicable.
  - iii. Discuss the scope of work and have the Project Manager available to answer technical questions.
  - iv. Conclude by announcing when and where the proposals are due and by restating the requested proposal length and maximum pages in scope of work.

7. Addenda to Requests for Proposals
- a. If after issuance of requests for proposals, but before the time set for receipt of proposals, it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc. or to correct or clarify a defective or ambiguous RFP such changes shall be accomplished by issuance, in writing, of an amendment to the RFP. Before issuing an amendment to an RFP, the period of time remaining until the time set for proposal submittal and the need for extending this time must be considered. Where only a short time remains, consideration should be given to notifying prospective proposers of an extension of time by email, facsimile or telephone. Such notification should be confirmed in the amendment. The amendment shall be sent to each prospective proposer to whom the RFP was furnished or who attended any site visit and/or pre-proposal conference.
  - b. Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if such information is necessary to proposers in submitting proposals on the request or if the lack of such information would be prejudicial to uninformed proposers. No award shall be made on the request unless such amendment has been issued in sufficient time to permit all prospective proposers to consider such information in submitting or modifying their proposals.
  - c. The RFP will indicate that CAT is not bound by any oral representations, clarifications, or changes made in the written specification by CAT's employees, unless such clarification or change is provided to potential proposers in written addendum form from CAT.
  - d. Each addendum issued to a request for proposals shall:
    - i. Be serially numbered and dated.
    - ii. Include the number, date and a description of the original RFP concerned.
    - iii. Clearly state the changes made in the RFP and the extension of the due date, if any.
    - iv. Include instructions to proposers for acknowledging receipt of the addendum and information concerning the effect of failure to acknowledge or return the amendment.

8. Cancellation of RFP

RFPs shall not be canceled unless cancellation is clearly in CAT's interest (i.e., where there is no longer a requirement for the service, or where amendments to the RFP would be of such magnitude that a new RFP is desirable). When an RFP is canceled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom requests for proposals were issued.

The notice of cancellation shall identify the RFP number; briefly explain the reason the RFP is being canceled; and, where appropriate, assure prospective proposers that they will be given an opportunity to propose on any re-solicitation or any further requirements for the type of service involved.

9. Receipt of Proposals

Proposals shall be submitted so as to be received at the location designated in the RFP not later than the exact time set for the receipt of proposals. The only acceptable evidence to establish the time of receipt at CAT's offices is the time/date stamp of CAT which shall be placed on the proposal wrapper immediately upon receipt. The CAT staff person receiving the proposal shall sign the exterior of the proposal package to verify the date and time received and person receiving the proposal. The timeliness of proposals is the sole responsibility of the proposer.

10. Withdrawal of Proposals

Any proposer may withdraw their proposal, either personally or by written request, received by CAT at any time prior to the time fixed for the receipt of the proposals. Negligence on the part of proposers in preparing their proposal confers no right of withdrawal of their proposal after such proposal has been opened. No proposal may be withdrawn for a period of 60 days following the proposal deadline.

11. Format of Proposal

The response to each RFP must be made in accordance with the requirements set forth in the RFP, both for mandatory content and for sequence. Noncompliance on the inclusion of conditions, limitations or misrepresentations may be cause for rejection of a proposal.

12. Determination of Responsiveness

- a. Any proposal which fails to conform to the essential requirements of the request for proposals, such as specifications, delivery deadline and method, or the required bid documents, shall be rejected as non-responsive.
- b. A proposal shall be rejected when the proposer imposes conditions, which modify requirements of the request for proposals. Proposals may be rejected in cases, including but not limited to those in which the bidder:
  - i. Attempts to protect itself against future changes in conditions such as increased costs, if a total price to CAT cannot be determined for proposal evaluation.
  - ii. Fails to state a price and in lieu thereof states that price shall be “price in effect at time of delivery.”
  - iii. States a price but qualifies such price as being subject to “price in effect at time of delivery.”
  - iv. Limits rights of CAT under any contract clause.
  - v. Fails to comply with all of the requirements of the RFP.
- c. After submitting a proposal, if a proposer transfers all of its assets or the part of its assets related to the proposal during the period between the proposal submission and the award, CAT may accept or reject the proposal at its sole discretion.

13. Responsible Proposer Evaluation

- a. Before awarding the contract, CAT shall determine that a prospective contractor is responsible and that prices are reasonable. Proposers may be asked to provide any information required to determine the responsibility of the bidder. A responsible proposer is one who meets the standards set forth below:
  - i. Has adequate financial resources, or the ability to obtain such resources as required during performance of the contract.
  - ii. Has a satisfactory record of integrity and business ethics.
  - iii. Is neither debarred nor suspended from State or Federal programs.
  - iv. Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.

- v. Is in compliance with applicable licensing and tax laws and regulations.
  - vi. Has a satisfactory record of performance. The contractor must have sufficient key personnel with adequate experience, a parent firm (if appropriate) with adequate resources and experience, and key subcontractors with adequate experience and past performance. The contractor must have sufficient past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in CAT's solicitation. Contractors who are, or have been seriously deficient in current or recent contract performance, when the number of contracts and the extent of deficiency of each are considered is presumed to be non-responsible. Documented past unsatisfactory performance will ordinarily be sufficient to justify a finding of non-responsibility.
  - vii. Is otherwise qualified and eligible to receive an award under applicable laws and regulations. In addition, the contractor's integrity and compliance with public policy will be examined.
  - viii. Has the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them.
  - ix. Has the necessary production, construction, and technical resources, equipment and facilities, or the ability to obtain them.
- b. Evaluation of the responsibility of prospective contractors may be made based upon the following sources:
- i. A list of debarred, suspended or ineligible firms or individuals. The System for Award Management (SAM) will be examined to determine if a prospective contractor has been debarred or suspended.
  - ii. From the prospective contractor's bids and proposals, replies to questionnaires, financial data such as balance sheets, profits and loss statements, cash forecasts, and financial histories of the contractor and affiliated concerns; current and past production records, list of tools, equipment, and facilities, written statements or commitments concerning financial assistance and subcontracting arrangements.
  - iii. Publications, including credit ratings, trade and financial

journals, and business directories and registers may also be used.

- iv. References such as suppliers, subcontractors, customers of the prospective contractor, banks and financial institutions, commercial credit agencies, other government agencies, purchasing and trade associations, and better business bureaus and chamber of commerce.
  - v. Documented past performance on contracts with CAT.
  - vi. Appropriate websites containing information concerning the responsibility of prospective contractors.
  - vii. If appropriate, it will be determined, through utilization of the Georgia State Licensing Board website, whether a prospective contractor possesses required licenses.
  - viii. If appropriate, prospective contractors will be required to provide financial information to determine if the contractor has financial resources adequate to perform the contract, or the ability to obtain them.
  - ix. The past performance of prospective contractors will be checked by contacting references using a list of standard questions, and responses will be documented.
  - x. In certain cases, such as bus procurements, site visits will be conducted to validate the manufacturing capabilities of the prospective contractor.
- c. Procurement personnel will be responsible for preparing the responsibility findings and will ensure that documentation of the findings is included in the procurement file.
  - d. Procurement personnel will ensure that no contract is recommended for award nor executed until the contractor has been determined to be responsible.
  - e. Procurement personnel will document any rejected bids and include the reason for rejection.
14. Documentation of Responsibility & Responsiveness
- a. Procurement staff shall use the Responsibility & Responsiveness Determination checklist form to create a record supporting the responsibility determination of each vendor and the determination of the responsiveness of

each proposal. The Responsibility & Responsiveness Determination form shall require Procurement Staff to confirm the receipt of signed federal clauses pertinent to the RFP.

15. Evaluation of Proposals

- a. Each RFP will contain the Evaluation Criteria that will be used by CAT in evaluating proposals. These criteria are set forth in the RFP in order of their relative importance, with the most important being listed first. To reflect this, each criterion will either be scored using an equal score range (equal weighing) or each criterion will be assigned a weight. If a weight is assigned, each score will be multiplied by the weight to produce a final criterion score. Price is always included as an evaluation criterion, with the exception of architectural and engineering services. Price will be evaluated by giving the lowest-price proposal the full number of points assigned to the price criteria and computing the number of points for the other proposals in accordance with their relationship to the lowest price--the lowest price is divided by the price of the proposer whose price is being evaluated, and then the quotient resulting from the foregoing calculation is multiplied by the number of points assigned to the price factor to determine the price score of the proposer whose price is being evaluated. This calculation is done for each proposal being evaluated. The price scores are then added to the scores for other factors to determine the highest over-all score. The RFP will clearly indicate how price will be evaluated. Only criteria set forth in the RFP may be used to evaluate the proposal.
- b. If the RFP sets forth “Minimum Requirements Criteria”, a “pass/fail” evaluation will be made of the proposal to determine compliance with the “Minimum Requirements Criteria.” Failure in any one of the “pass/fail” criteria may be cause for disqualifying the entire proposal from further review. However, CAT’s evaluation may, in CAT’s discretion, be augmented by oral or written requests to proposers for clarification, or additional information as necessary to determine if the “Minimum Requirements Criteria” have been met. The determination to disqualify a proposal shall be solely at the discretion of CAT
- c. Proposals are evaluated using the procedures set forth below:
  - i. An evaluation committee for each RFP will be recommended by the procurement staff in consultation with the Project Manager and appointed by the Executive Director. In appointing individuals to a Committee, the Executive Director will consider the nature of the procurement, and the appropriate expertise of the individuals appointed to the Committee.

- ii. A date and time for an evaluation meeting will be set, if required.
- iii. Members of the Evaluation Committee shall be familiar with the content of the RFP. Any questions on the RFP, or documentation furnished by an offeror should be addressed to the Procurement Manager prior to initiation of evaluations.
- iv. The Evaluation Committee shall perform a technical evaluation of each offeror's proposal using the evaluation score sheets provided by the procurement staff. The evaluation score sheets shall contain the evaluation factors that are stated in the solicitation. Procurement staff shall be responsible for assessing the cost or price of each proposal and assigning the appropriate points or appropriate percentage equitably among the qualified proposals received.
- v. Procurement staff shall be responsible for determining the Disadvantaged Business Entity (DBE) status of each offeror and assigning the appropriate points or appropriate percentage equitably among the qualified DBE proposals received.
- vi. Based on the collective results of the Evaluation Committee's evaluation, the price or cost evaluation, and the DBE status evaluation, Procurement staff will provide the Executive Director/CEO a recommendation for award of contract. After reviewing the recommendation, the Executive Director shall make a determination of the recommendation to the Board of Directors for a contract award.

16. Discussions

- a. The Evaluation Committee may conduct oral discussions with all responsible offerors who submit proposals within the competitive range, as determined in Section 3. During the discussion phase of the source selection process, all communication is coordinated through the Procurement Manager. If discussions are conducted with one offeror, discussions must be conducted with all offerors within the competitive range.
- b. The discussion process is governed by the following general guidelines.
  - i. Notify all proposers regarding their status and arrange a meeting with the offerors who have been determined to be within the competitive range.
  - ii. Orally at the meeting and in written form advise offerors of

deficiencies in their proposals so that the offerors are given an opportunity to satisfy CAT's requirements.

- iii. Attempt to resolve any uncertainties concerning the technical proposals and other terms and conditions of the proposal.
  - iv. Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process.
  - v. Provide the offeror a reasonable opportunity to submit any cost or price, technical or other revisions to its proposal that may result from the discussion.
- c. During the discussion the Evaluation Committee should not engage in:
- i. Technical leveling, defined as helping an offeror bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal.
  - ii. Technical transfusion, defined as disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal.
  - iii. Auction techniques, such as:
    - i. Indicating to an offeror the cost or price that it must meet to obtain further consideration.
    - ii. Advising an offeror of its price standing relative to another offeror; however, it is permissible to inform an offeror that its cost or price is considered by the Evaluation Committee to be too high or unrealistic.
    - iii. Otherwise furnishing information about other offeror's prices.
- d. Discussion after receipt of initial proposals is not required in the following cases:
- i. Procurement is for supplies for which prices or rates are fixed by law or regulation;
  - ii. Time for delivery will not permit discussions; or,

- iii. The procurement is for a product and, due to the existence of adequate competition or accurate prior cost experience, it can be clearly demonstrated that acceptance of an initial proposal would result in a fair and reasonable price.

17. Request for Best and Final Offer

- a. CAT may make a selection for contract award without requesting Best and Final Offers or may issue to all proposers within the competitive range a request for a final supplement denominated the “Best and Final Offer“ (BAFO). Oral requests for best and final offers shall be confirmed in writing. Best and Final Offers must be submitted in accordance with written procedures received from CAT.
- b. Such requests shall advise offerors:
  - i. That negotiations are being concluded.
  - ii. That offerors are being asked for their “best and final” offer, not merely to confirm or reconfirm prior offers.
  - iii. That any revision or modification of proposals must be submitted by the date specified.
- c. Following the review of the BAFOs by the Evaluation Committee, the Procurement Manager shall consolidate the cost and technical evaluations and all score sheets along with their comments and recommendations. After reviewing the evaluations and recommendation made by the Evaluation Committee,, the Executive Director shall make a determination of the recommendation for contract award.

18. Debriefing of Unsuccessful Proposers

- a. When a contract is to be awarded on some basis other than price alone, unsuccessful proposers shall be debriefed upon their written request submitted to the Procurement Manager within five business days after award of the contract. Debriefings shall be provided at the earliest time after the Procurement Manager makes a final determination recommending the award of the contract. The debriefing shall be conducted by the Procurement Manager and may be either oral or written as the Procurement Manager determines appropriate.
- b. The debriefing shall:

- iv. Be limited to discussion of the unsuccessful proposer's proposal and must not include specific discussion of a competing proposer's proposal.
- v. Be factual and consistent with the evaluation of the unsuccessful proposer's proposal; and
- vi. Provide information on areas in which the unsuccessful proposer's technical proposal was deemed weak or deficient.

19. Award of the Contract

After evaluation of proposals in accordance with the criteria set forth in the RFP, the contract shall be awarded to the offeror of the proposal that provides the best value and is most advantageous to CAT, price and other factors considered. CAT's cost principles for determining reasonable price are consistent with Federal cost principles. For procurements greater than \$100,000, contracts will contain remedies for breach.

Notice of award shall be made by over-night delivery, email, or facsimile to the successful proposer. In addition, CAT will notify all unsuccessful proposers of its intent to award a contract to the successful proposer at the same time it notifies the successful proposer if Board approval is not required, and at the same time as the publication of the Board agenda if Board approval is required. Notification to unsuccessful proposers will be made by over-night delivery, email, or facsimile. If the Board does not accept the Executive Director's recommendation as to the successful proposer, the Board may: (1) choose another proposer using the same criteria set forth in the RFP; or (2) direct re-solicitation of proposals.

20. Final Award

If Board of Directors approval is required for selection of the successful proposer, the procurement staff and the Project Manager will prepare the board report that identifies all individuals or firms responding to the RFP, describes the procurement and evaluation processes, and sets forth the evaluation scores for each proposer. The board report should describe the services or goods being procured.

A contract form approved by legal counsel will be utilized and the Procurement Manager will ensure that the contract is executed at the approval level required in these procedures.

The contract may be executed electronically or in one or more identical counterparts, each of which shall be deemed to be an original. The contract shall be maintained in CAT's Central Files and distributed to the Project Manager and the contractor.

## 21. Project Completion

All original documentation related to each procurement such as the RFP, successful proposal, BAFO, control record, board report, background data, evaluation criteria and scores, and meeting reports/notes will be submitted to the Chief Financial Officer for storage when the file becomes inactive. For audit purposes, complete files will be maintained for a minimum of four years after the project is closed out and completed unless a different time period is mandated by a funding entity.

Negotiated procurement records or files should provide at least the following pertinent information: justification for the use of negotiation in lieu of competitive bidding; contractor selection; justification for contract type; determination and findings; record of negotiations; and cost or price analysis.

### **E. Special Procedures for Architectural/Engineering Services**

#### 1. Competitive Negotiations

- a. Special procedures will be used for competitive negotiation procedures for qualifications-based procurement of architectural and engineering (“A/E” hereafter) services and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services of real property. An RFP is used in the solicitation of A/E and related services. CAT will procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in 4220.1F, VI, 3. h. when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in 4220.1F, VI, 3. f. Qualifications-based competitive proposal procedures will not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in 4220.1F, VI, 3. f, unless required by State law.
- b. Following this method, each proposer’s qualifications are evaluated and the most qualified proposer is selected subject to negotiation of fair and reasonable compensation. Under this method, CAT may not consider price as an evaluation factor in determining the most qualified proposer. Negotiation is conducted with only the most qualified proposer. This method, where price cannot be used as an evaluation factor and negotiations are conducted with only the most qualified proposer, can only be used in procurement of the above services. This method of procurement cannot be used to obtain other types of services even though firms that provide the above types of services are also potential sources to perform

other services.

## 2. Formal Solicitation Evaluation

Refer to the RFP procedures above for all pre-evaluation activities. The steps to be used for proposal evaluation and contract negotiation for A/E and related services solicitations are as follows:

- a. An evaluation committee will be recommended by the procurement staff in consultation with the Project Manager and appointed by the Executive Director to review eligible firms and all responses to RFP.
- b. Evaluation Committee evaluates the qualifications of the firms based on factors including:
  - i. Professional qualifications for performance of the required services;
  - ii. Specialized experience and technical competence in the type of work required;
  - iii. Capacity to accomplish the work in the required time; and,
  - iv. Past performance in terms of cost control, quality of work and compliance with performance schedules.
  - v. Geographic location may be a selection criteria for A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
- c. Evaluation Committee may hold discussions with the most highly qualified firms (“short list”) if it is determined that such discussions will aid in selecting the most highly qualified firm.
- d. After the Evaluation Committee ranks the firms from most qualified to least qualified, Procurement staff shall obtain a price proposal from the most qualified firm and conduct a cost analysis to determine if the price proposed is fair and reasonable.
- e. If the most qualified firm’s price is not fair and reasonable, Procurement staff shall conduct price negotiations. If these negotiations are terminated without awarding a contract to the highest rated firm, CAT will move to next highest rated firm to obtain a fair and reasonable price proposal using the procedures outlined in this policy.
- f. If negotiations regarding compensation with the contractor are necessary, the compensation must represent a fair and equitable payment for the services performed. At this stage, negotiations must take place not only on the amount of compensation, but also the method of payment.
- g. In determining the amount of compensation and the method of payment,

consideration shall be given to:

- i. Scope and complexity of designs, surveys and other work and the skills necessary for these services.
  - ii. Quality and quantity of data provided to the A/E by CAT.
  - iii. Location of, and conditions under which, the services will be performed.
  - iv. Date services to begin and time allowed for performance.
- h. Costs should be negotiated taking into consideration:
- i. Direct Labor.
  - ii. Overhead.
  - iii. General and administrative expenses.
  - iv. Materials.
  - v. Other direct costs.
  - vi. Profit, which is further influenced by:
    - a. Degree of A/E's risk.
    - b. Level of effort.
    - c. Level of talent or expertise the A/E must furnish.
    - d. Amount of subcontracting.
    - e. Amount of top level A/E management involved.
    - f. Subcontracts.
    - g. Contractor's investment.
- i. Once a fair and reasonable price is obtained from a qualified firm, the Procurement Manager shall prepare a selection report for the Executive Director listing the responsible firms from most qualified to least qualified and advising which firm is proposed based on Evaluation Committee selection and price reasonableness. The report should include documentation of the evaluations by the Evaluation Committee to allow the Executive Director to review the basis upon which the recommendations were made. The Executive Director shall not add firms to the selection report. If the selected firm is deemed to be unqualified or the report is inadequate, the Executive Director shall document the reasons therefore and return the report to the Procurement Manager for appropriate revision by the Evaluation Committee.
- j. The final selection of a firm shall be made by the Executive Director from the list of the qualified firms prepared by the Procurement Manager and based on the Evaluation Committee's selection and price reasonableness.
- k. When the contract is negotiated and signed, the negotiations are documented and placed in the file.
- l. The contract shall be monitored to ensure that expenditures and payments therefor are commensurate with performance and that both have met all the

terms of the contract.

- m. The contractor is responsible for the professional quality, technical accuracy and coordination of all services under the contract. The contractor may be liable to CAT for costs resulting from errors or deficiencies in design furnished under the terms of the A/E contract.
- n. A Design-Bid-Build Project means 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. CAT may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this Circular 4220.1F relative to the method of procurement used and all other applicable federal requirements.
- o. Design-Build project means (1) a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that conforms to specific performance criteria; and (2) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment. Apart from the definition at 49 U.S.C. Section 5325(d)(1), a “design-build project” also means a construction project under which a recipient enters into a contract with a seller, firm, or consortium of firms both to design and to construct a public transportation facility that is the subject of the project. These services must be procured in a manner that conforms to applicable state and local law, the requirements of Circular 4200.1F relative to the method of procurement used and all other applicable federal requirements.

#### **F. Sole Source Procurements**

Sole source procurement is a purchase accomplished through solicitation or acceptance of a proposal from only one source; or, if after solicitation of a number of sources competition is determined inadequate. A sole source purchase must be documented as to the reasons why only one supplier is acceptable. The written request for the approval of a sole source will be drafted by the originating director and routed through the Procurement Manager to the Executive Director or Board for approval.

- A. A contract amendment or change order that is not within the scope of the original contract is considered a sole-source procurement.

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

I. Single Source

The item or services sought is available only from a single source and one of the following condition described below is present:

- a. Unique Capability or Availability. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to CAT only from one source and has not in the past been available to CAT from another source.
- b. Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
- c. Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- d. Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling CAT's needs.
- e. Unusual and Compelling Urgency. CAT may limit the number of sources from which it solicits bids or proposals when it has such an unusual and urgent need for the property or services that it would be seriously injured unless it were permitted to limit the solicitation. CAT may limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.

- f. FTA Approval. The Federal Transit Administration authorizes noncompetitive negotiations.
- g. Inadequate Competition. After solicitation of a number of sources, competition is determined inadequate. If upon completion of a competitive procurement only one proposal is received, the Chief Financial Officer will review the specifications and determine if they were unduly restrictive or by contacting sources that chose not to submit a bid or proposal. If it is determined that the competition was inadequate, the procurement can proceed as a sole source.

- C. A cost/price analysis must be performed for contracts where required. The purpose of the analysis is to provide sufficient information to support the conclusion that the price is fair and reasonable. The analysis will be prepared by the project manager and procurement personnel. The Procurement Manager will ensure that no sole source contracts will be executed until a fully detailed and documented analysis is completed, and made a part of the appropriate procurement file.

#### **G. Single Bid or Proposal**

A single bid situation exists when only one bid has been received at the time and date set for bid opening; or only one responsive bid is received at the time and date set for bid opening (as a result of having only one responsive bidder and all other bidders being determined to be non-responsive). A single proposal situation exists when only one proposal has been received at the time and date set for submission of proposals, or it is determined after review of proposals received that only one proposal meets the criteria set forth in the request for proposals.

When only one bid or proposal is received in response to a solicitation that was issued to multiple sources, it must first be determined if there was adequate competition. The receipt of only one bid or proposal does not, in itself, mean that competition was inadequate. At a minimum, to determine if there was adequate competition, bidders/proposers who received solicitations, but did not bid/propose, will be contacted by the Procurement Manager and questioned to determine why they did not respond to the solicitation. Potential bidders/proposers will be specifically queried as to whether there were any elements in the procurement which may have restricted competition. The procurement staff will ensure that documentation reflecting the above process is included in the procurement file. Upon completion of the above process, the Procurement Manager will determine whether there were any elements in the procurement that may have restricted competition and will determine whether the procurement documents should be modified and the solicitation re-advertised or whether the procurement can go forward as originally advertised. If this is the case then

the procurement is treated as a sole source, and it must be processed in accordance with the requirements for a sole source procurement set out in these Procedures.

Alternatively, the original solicitation can be cancelled, the requirements in the original solicitation can be changed to allow for more bids or proposals, and a new invitation for bids or request for proposals issued.

If the reasons given by the non-responders are unrelated to the specification and/or solicitation terms, it will be presumed that competition was adequate and the award of the contract can be carried out as the result of a competitive procurement.

If the competition is deemed to be adequate, a price analysis must be performed to determine the reasonableness of the bid or proposal price. If, on the basis of a price analysis, the procurement staff is able to document that the price is fair and reasonable, and if the bid is responsive and, as appropriate, the bidder or proposer is responsible, the contract may be awarded. If procurement personnel cannot determine the reasonableness of the bid or proposal price on the basis of a price analysis, the procurement staff will request a detailed breakdown of costs and profit from the bidder or proposer and perform a cost analysis.

If competition is deemed to be adequate, and it is determined appropriate to process the award as a sole source, a cost analysis must be performed unless the reasonableness of the price can be established based on a bidder or proposer's catalogue or market price.

## **H. Emergency Procurements**

Emergency procurements are allowed only if the procurement is necessary to:

1. Preserve life or property;
2. Prevent the immediate termination of a critical CAT function or activity;
3. Address a health and safety issue that prohibits delay; or
4. Respond to a declared state of emergency.

Requests for emergency procurements will be handled immediately and expedited as required. The Executive Director has the authority to approve the purchase of all goods and services in emergency conditions. If the Executive Director is unavailable to authorize an emergency procurement, the Chief Financial Officer may provide the necessary authorization. Upon completion of the emergency procurement, the Procurement Manager will document the emergency actions taken and appropriate approval of said actions.

## **I. Unsolicited Proposals**

1. An Unsolicited Proposal is a proposal that is:
  - a. Innovative and unique.

- b. Independently originated and developed by the offeror.
  - c. Prepared without CAT's supervision, endorsement, direction, or direct involvement.
  - d. Sufficiently detailed that its benefits in support of CAT's mission and responsibilities are apparent.
  - e. Not an advance proposal for property or services that CAT could acquire through competitive methods.
  - f. Not an offer responding to a published expression of need or request for proposals previously published by CAT.
2. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, competition is required. To satisfy the requirement for full and open competition, the following actions must be taken before CAT enters into a contract resulting from an unsolicited proposal:
- a. Publicize receipt of the unsolicited proposal.
  - b. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.
  - c. Publicize CAT's interest in acquiring the property or services described in the proposal.
  - d. Provide an adequate opportunity for interested parties to comment or submit competing proposals.
  - e. Publicize CAT's intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.
3. If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, CAT may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property or services proposed.

## **J. Amendments and Change Orders**

1. An amendment is any change to a contract that alters the terms and conditions of the original contract; or provides for a change in the scope or requirements of the original contract beyond what is specifically allowed by the original contract. Amendments are formal changes that must be approved at the same signature authority level as the original contract. A contract may not be amended to include a larger scope, greater quantities, or options beyond CAT's reasonably anticipated needs.
2. CAT shall have the right, based on a clause contained in each contract to issue a change order to correct errors, omissions, or discrepancies; to cover acceptable overruns; to expand or reduce the scope of the contract; or to direct other changes in contract execution to meet unforeseen field, regulatory or market conditions. All change orders must be within the scope of the original contract and approved by CAT in advance of work being conducted by the contractor in accordance with the value of the change order or the calculated value of the time extension. In addition, CAT shall have the unilateral right, based on a clause contained in each contract, to issue an immediate change order and negotiate cost and price for time and materials after the issuance of the change order. Change orders must be approved at the same signature authority level as the original contract. A change order is not permitted if the change causes a major deviation from the original purpose of the work or the intended method of achievement, or causes 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. Such a change would be considered a "cardinal change" to the contract.
3. All amendments and change orders shall be submitted to the procurement staff complete with explanations and back up information and, when applicable, a detailed breakdown of charges for review and/or recommendation of approval.
4. Verification of Amendments and Change Orders: The procurement staff will verify all amendments and change orders under the following procedures:
  - a. The project manager will review the proposed contract amendment or change order and determine whether it is within the scope of work for the project of the original contract. If the change is within the scope of work of the original contract, the project manager and the procurement staff will perform a cost/price analysis to determine if the price is fair and reasonable before approving the change.
  - b. If the change is not within the scope of work of the original contract, the contract change will be treated as a sole-source procurement, and evaluated accordingly. Supporting documentation will be added to the procurement files.

- c. The procurement staff and the project manager will ensure that the methods of calculating the amount of the amendment or change order are in conformance with the terms of the contract.
- d. The issuance of change orders for each individual contract shall be monitored by procurement personnel.

**K. Use of an Existing Contract**

- 1. An “existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto, and does not include State or local government purchasing schedules or purchasing contracts. The use of “tag-ons” (the addition of work, supplies, equipment or services) by CAT that is beyond the scope of the original contract is prohibited. State or local government purchasing schedules or purchasing contracts are included in this “tag-on” prohibition.
- 2. Within the conditions set forth below, CAT is permitted to use existing contract rights held by another.
  - a. CAT may use contract options held by another with the following limitations:
    - i. CAT must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
    - ii. CAT may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.
  - b. When CAT uses contract options held by another (commonly known as “piggybacking”), staff will first determine that the contract price remains fair and reasonable.

Additionally, CAT procurement staff will complete the “Piggyback Worksheet” included below to ensure that procurement is completed within FTA regulatory guidelines. CAT will ensure that the final procurement file includes documentation necessary to substantiate the following:

- i. Request was made of and approved by the original contracting agency.

- ii. CAT staff obtained copies of the original contract and solicitation document, including the specifications and any Buy America Pre- award or Post-Delivery audits.
- iii. CAT staff verified the solicitation and contract contained an express “assignability” clause that provides for the assignment of all or part of the specified deliverables.
- iv. CAT staff verified that the contractor submitted the “certifications” required by Federal regulation.
- v. CAT staff verified that the contract contained the clauses required by Federal regulations.
- vi. CAT staff verified that the piggybacking quantities were included in the original solicitation and evaluated as part of the contract award decision.
- vii. If the contract was an indefinite quantity contract, CAT staff verified that the original solicitation and resultant contract contained both a minimum and maximum quantity and represented the reasonably foreseeable needs of the parties to the contract.
- viii. If the piggyback action represented the exercise of an option, CAT staff verified that the option provision was still valid and had not expired.
- ix. CAT staff verified that State law allows for procedures used by the original contracting agency.
- x. CAT staff verified that a cost or price analysis was performed by the original contracting agency documenting the reasonableness of the price and obtained a copy of the determination for the permanent procurement record.
- xi. If the contract is for rolling stock, CAT staff determined the contract complied with the five-year term limit established by FTA.
- xii. CAT verified that there was a proper evaluation of the bids and proposals and obtained a copy of the analysis for the permanent procurement record.
- xiii. CAT verified that any changes to deliverables are “within the scope” of the contract and or not “cardinal changes”.

Example of Worksheet completed for each use of an existing contract is included on following page:

## PIGGYBACKING WORKSHEET

**Definition:** *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.*

<b>WORKSHEET</b>	<b>YES</b>	<b>NO</b>
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 4220.1F, Chapter IV, 2 (14) (i).		
11. Was there a proper evaluation of the bids or proposals? Include a copy of the analysis in your files.		
12. If you will require changes to the vehicles (deliverables), are they “within the scope” of the contract or are they “cardinal changes”? See BPPM Section 9.2.1.		

Prepared By (Procurement Specialist): \_\_\_\_\_

Approved By (CFO): \_\_\_\_\_

3. Assignment of Contract Rights.
  - a. CAT is required to limit its procurements to the amount of property and services required to meet its reasonably expected needs without adding excess capacity simply for the purpose of assigning contract rights to others at a later date. CAT must be able to justify the quantities it procures.
  - b. CAT may assign its contract rights to others if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions.

#### **L. Options**

In awarding a contract that will include options, CAT will evaluate bids, offers or proposals for any option quantities or period contained in a solicitation if it intends to exercise those options after the contract is awarded. The price associated with exercising the option will be defined within the contract, either as a specific price or as a percentage increase of the base price. If the option was not evaluated as part of the award, the exercise of the option will be treated as a sole-source procurement, and evaluated accordingly. When an option is exercised, the Procurement Manager will ensure that the exercise of the option is in accordance with the terms of the original solicitation and contract. A cost or price analysis will be conducted as appropriate to determine if the option price is better than prices available in the market at the time that the option is to be exercised, or that the option price is more advantageous to CAT at the time that the option is exercised.

Option quantities, periods, and terms identified in a bid or proposal will be evaluated by the project manager or the CAT evaluation team at the time that the bid or proposal is evaluated and prior to the award of the base contract.

A record of the above actions will be documented in the procurement records.

#### **M. Intergovernmental and Joint Procurement Agreements**

CAT can utilize available state and local intergovernmental agreements for the procurement or use of common goods and services. When obtaining goods or services in this manner when Federal funds are utilized, the procurement personnel shall ensure that all federal requirements, required clauses, and certifications are properly followed and included in either the master intergovernmental contract or in CAT's purchase document.

CAT can jointly procure goods and services with other entities. When obtaining goods or services in this manner when Federal funds are utilized, the procurement personnel

shall ensure that federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.

CAT will ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included when intergovernmental or joint procurement agreements are utilized. Applicable federal requirements and clauses will be included in all CAT contracts and purchase orders. Procurement staff will obtain Buy America certification before entering into any applicable purchase agreement. When these joint procurement agreements are utilized, a determination that the contracts were awarded with full and open competition and were not subject to geographical preferences will be made and documented in the permanent procurement record.

## **N. Independent Cost Estimates**

An Independent Cost Estimate (ICE) is required for all procurements above the federal Simplified Acquisition Threshold, currently set at \$250,000.00.

### **1. Construction Projects**

Construction cost estimates will be developed either directly by the A&E firm responsible for design development of the project or by a subcontractor of the firm. The estimates received will be dated and made part of the procurement documentation. The procurement staff will ensure that the estimates are received prior to the receipt of bids.

- a. The estimates will be made part of the procurement documentation and will be utilized and compared to the actual bids received to determine the reasonableness of the bids.
- b. Following the receipt of bids, the Procurement Manager, in consultation with the project manager and the A&E firm, will determine the reason for any bid prices that exceed the estimates, document the reason, and ensure that the documentation is included in the appropriate procurement file.

### **2. Non-Construction Projects**

- a. Cost estimates for non-construction projects may be developed by the project manager or an appropriate third party as part of the development of solicitation documents. The estimates will be made part of the procurement documentation and will be utilized and compared to the actual bids or price proposals received to determine the reasonableness of the bids or price proposals. At a minimum, the documentation will identify the source of information used to develop the estimate, the date that the estimate was made, and identify the individual preparing the estimate. The procurement staff will ensure that the estimates are

prepared prior to the receipt of proposals or bids.

- b. Following the receipt of bids or proposals, the procurement staff, in consultation with the project manager or third party providing the estimates, will determine the reason for any bid price or price proposals that exceed the estimates, document the reason, and ensure that the documentation is included in the appropriate procurement file.

## **O. Subchapter O - Price/Cost Analysis**

### **1. Single Bid**

In the event a single bid is received, a price or cost analysis shall be used to determine the reasonableness of the bid price. The purpose of the analysis is to provide sufficient information to support the conclusion that the price is fair and reasonable. The appropriate analysis will be prepared by the project manager and the procurement staff. The Procurement Manager will ensure that no contracts will be executed until a fully detailed and documented analysis is completed, and made a part of the appropriate procurement file.

### **2. Evaluating Bid Price**

The procurement staff may conduct a price analysis in evaluating a bid price. If a valid price analysis cannot be completed, a cost analysis of the bid price may be conducted.

### **3. Evaluating Prospective Price**

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

### **4. Review of Contractor's Cost or Price Data**

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

### **5. Cost vs. Price Analysis**

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

6. Conducting a Price Analysis

Price analysis may be accomplished through one or more of the following activities:

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

7. Conducting a Cost Analysis

Cost analysis may be accomplished through the following:

- a. Verify contractor’s cost data.
- b. Evaluate specific elements of costs and project these data to determine the effect on prices of such factors as:
  - i. The necessity for certain costs;
  - ii. The reasonableness of amounts estimated for the necessary costs;
  - iii. Allowances for contingencies; and
  - iv. The basis used for allocations of particular overhead costs to the proposed contract.
- c. When the necessary data is available, compare the contractor’s estimated cost with:
  - i. Actual costs previously incurred by the contractor;
  - ii. The contractor’s last prior cost estimate for the same or similar estimates;
  - iii. Current cost estimates from other possible sources; and

- iv. Prior estimates or historical costs of other contractors manufacturing the same or similar items.
- d. Forecasting future trends in costs from historical experience:
  - i. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends.
  - ii. In cases involving recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

8. Questions for Cost Analysis

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

- a. Is the cost allowable in accordance with guidelines in Section 15 of the Federal Acquisition Regulations (FAR)?
- b. Is the cost allocable to the particular project?; and,
- c. Is the cost reasonable?

9. One Bid or Proposal

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

**P. Vehicle Purchasing Procedures**

1. Purchases under \$150,000

Purchases under \$150,000. For vehicle purchases under \$150,000 follow the procedures in Subchapter B, Small Purchases. The abbreviated versions of the pre-award and post-delivery audit certifications and reports found in paragraph E (1) of this part will be required.

2. Purchase over \$150,000

Purchases Over \$150,000. For vehicle purchases over \$150,000, ensure compliance with Buy America Act requirements, including pre-award and post-delivery audit requirements and certifications, as well as certifications applicable under the FMVSS.

3. DBE – TVM Certifications

DBE – TVM Contract Clause and Certifications – All Rolling Stock Procurements

- a. Transit vehicle procurements using FTA funds must only occur with TVMs that adhere to the requirements. This is done through the inclusion of both a FTA required contract clause and a certification, to be completed by the TVM, in the solicitation documents.
- b. The following clause must appear in a transit vehicle solicitation:

DBE Requirements for Transit Vehicle Manufacturers (TVM)  
Pursuant to Title 49, Code of Federal Regulations, part 26.49, a Proposer, as a condition of being authorized to respond to this solicitation, must certify by completing the DBE Approval Certification that it has on file with the Federal Transit Administration (FTA) an approved or not disapproved annual disadvantaged business enterprise (DBE) subcontracting participation goal.

4. FTA DBE Approval Certification

FTA Required DBE Approval Certification

- a. The submission of a DBE Approval Certification is required with each bid or proposal:
  - i. If the vehicle being solicited requires a TVM certification, vendors must provide the certification to be deemed responsive. The certification must be provided with their submittal and must be retained in the procurement file.
  - ii. Verify that bids or proposals received include the required, signed DBE Approval Certification (bids or proposals missing this certification are determined non-responsive).

5. Pre-Award Report

Pre Award Report

*See Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements Handbook at <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-handbook> for additional information.*

The pre-award report must be completed before the award of the contract. The audit should be done by someone qualified and independent from the procurement process, the manufacturer, and the manufacturer's agent.

- a. Pre-Award reports for vehicle procurements under \$150,000:

- i. Altoona Bus Testing (Master Agreement Reference 16, p. 43)
  - A. Verify the vehicle that was submitted as part of the solicitation has an Altoona test <http://altoonabustest.psu.edu/buses>.
  - B. Read the report to see if there were any deficiencies noted in the testing, verify that they have been corrected and retested.
  
- ii. TVM Certification
  - A. Confirm eligibility of a TVM prior to awarding a contract for FTA-assisted transit vehicle purchase and document in the procurement record and DBE Program activity file this confirmation by memorandum and/or screen shot of vendors listed at <https://www.fta.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehiclemanufacturers>
  - B. Obtain the FTA approval letter for the TVM's DBE goal from the TVM prior to awarding a contract.
  - C. Verify the signed certifications are included in the bid documents.
  
- iii. FMVSS Certification
  - A. Obtain the FMVSS self-certification (sticker) information from the motor vehicle manufacturer
  - B. Complete a Pre-Award FMVSS Compliance Certification
  
- iv. Purchaser's Requirement Certification
  - A. Assess whether the proposed manufacturer's bid complies with the solicitation specifications and whether the manufacturer is responsible and has the capacity and capability to produce a vehicle that meets specifications.

Manufacturer's technical information includes:

1. Bid
2. Specifications
3. Product brochures
4. Technical data sheet
5. Bills of materials
6. Drawings
7. Any other information

Manufacturer's Capability and Capacity includes:

1. Past performance
2. Qualifications of key personnel
3. Facility layouts/drawings, production line layout/flowchart
4. Plant output capacity (i.e. max production rate per week)
5. Staffing counts by craft
6. Readiness of fixtures for car body construction

7. Quality assurance and control plan
  8. Other item necessary to execute the work, e.g.:
    - a. Meet required schedule
    - b. Verify manufacturer's financial viability or review the proposed manufacturer's public financial statement
- v. Pre-Award reports for vehicle procurements over \$150,000:
- i. Altoona Bus Testing (Master Agreement Reference 16, p. 43)
    - A. Verify the vehicle that was submitted as part of the solicitation has an Altoona test <http://altoonabustest.psu.edu/buses>.
    - B. Read the report to see if there were any deficiencies noted in the testing, verify that they have been corrected and retested.
  - ii. TVM Certification
    - A. Confirm eligibility of a TVM prior to awarding a contract for FTA-assisted transit vehicle purchase and document in the procurement record and DBE Program activity file this confirmation by memorandum and/or screen shot of vendors listed at <https://www.fta.dot.gov/regulations-and-guidance/civil-rghs-ada/eligible-transit-vehiclemanufacturers>
    - B. Obtain the FTA approval letter for the TVM's DBE goal from the TVM prior to awarding a contract.
    - C. Verify the signed certifications are included in the bid documents.
  - iii. FMVSS Certification
    - A. Obtain the FMVSS self-certification (sticker) information from the motor vehicle manufacturer
    - B. Complete a Pre-Award FMVSS Compliance Certification
  - iv. Purchaser's Requirement Certification
    - A. Assess whether the proposed manufacturer's bid complies with the solicitation specifications and whether the manufacturer is responsible and has the capacity and capability to produce a vehicle that meets specifications.

Manufacturer's technical information includes:

1. Bid
2. Specifications
3. Product brochures
4. Technical data sheet
5. Bills of materials
6. Drawings
7. Any other information

- v. Buy America Certification  
Prior to making awards for vehicle purchases over \$150,000, CAT must ensure that it has complied with the Buy America certification requirements of 49 C.F.R § 663.25(b) and completed its own certifications required by 49 C.F.R § 663.27 (a) and (b).  
The Buy America requirements flow down from FTA recipients and sub-recipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.  
The Buy America clause must be inserted in all IFB/RFP documents. Retain these documents with the vehicle procurement file.  
There is a spreadsheet in the Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements Handbook, referenced above, for the vendors to utilize to verify domestic content before award.

## 6. Post-Award Submission

### Post Award Submission

- a. FTA Transit Vehicle Award Report
  - i. CAT must submit, within 30 days of making an award (and exercising a contract renewal/option), the name of the successful transit vehicle manufacturer and the total dollar value of the contract (49 CFR 26.49) using the Transit Vehicle Award Report form to the FTA.  
The FTA report form and instructions can be found at:  
<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>

## 7. Post-Delivery Report and Delivery Documents

### Post Delivery Report and Delivery Documents

*See Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements Handbook at <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-handbook> for additional information.*

CAT must ensure that a post-delivery audit is completed before title to the rolling stock is transferred to the recipient as noted in 49 CFR § 663.31.

- a. Purchaser's Requirements (all Rolling Stock)
  - i. Post Delivery Purchaser's Requirements Certification that certifies: The vehicles purchased comply with the contract specifications and identify areas of noncompliance either through a resident inspector or through the recipient inspecting and testing the vehicle.
  - ii. After vehicle delivery, complete visual inspections and road tests to verify that the vehicle meets the contract specifications:

- iii. A copy of the Post Delivery Purchaser's Requirements Certification must be kept in the procurement file.
- b. Federal Motor Vehicle Safety Standards (FMVSS) Certification (all Rolling Stock)
- i. Complete the Post Delivery Federal Motor Vehicle Safety Standards (FMVSS) Certification that certifies the vehicle complies with FMVSS.
  - ii. After vehicle delivery, ensure the vehicle was delivered with the following:
    - A. A copy of the manufacturer's self-certification;
    - B. The FMVSS self-certification sticker information;
    - C. FMVSS stickers affixed to each vehicle.
  - iii. Keep a copy of the Post Delivery Federal Motor Vehicle Safety Standards (FMVSS) Certification in the procurement file.
  - iv. If the FMVSS is inapplicable, CAT must:
    - A. Obtain the manufacturer's certified statement indicating that contracted motor vehicles are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571;
    - B. Complete a Post Delivery Certification of the FMVSS Inapplicability;
    - C. Keep the FMVSS Inapplicability Certification in the procurement file.
- c. Buy America Certification Requirements (over \$150,000)

CAT must verify that the manufacturer complied with applicable Buy America requirements in the production of the rolling stock and this verification must be based on actual data.

- i. Complete the Post Delivery Buy America Compliance Certification – before the vehicle title is transferred to the CAT;
- ii. Certify that the recipient received a waiver from FTA; or
- iii. Certify that the vehicle(s) procured:
  - A. Contain components that exceeded the required domestic content per 49 CFR Part 661.  
*Note: Include documentation of the final list of major components and sub-assemblies made in the U.S., and the calculated percentage of total manufacturer's cost for each item.*
  - B. Verifies that final assembly occurred in the United States and the activities were compliant with Buy America.  
*Note: Include documentation on the list of activities that took place during the final assembly.*
  - C. Includes documentation on the cost of final assembly (the required percentage or more of the value of the components must

be manufactured in the United States and final assembly must be made in the United States).

- iv. A copy of the completed Post Delivery Buy America Compliance Certification must be kept in the procurement file.

2. Certification, Reports, and Forms Summary for Vehicle Purchases

<b>CERTIFICATIONS, REPORTS, AND FORMS</b>	<b>COMMENTS</b>	<b>REGULATORY REFERENCE</b>
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with a major changeover changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663

Federal Motor Vehicle Safety Standards Preaward Review and Post Delivery	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

## CHAPTER IV - PURCHASE ORDERS

### A. Umbrella Purchase Orders

The procurement staff will issue an umbrella purchase order for goods or services based, if possible, on competitive quotations to procure items on an as-needed basis provided that the aggregate amount purchased from a single source is below \$50,000 and the order is not issued for over a twelve-month period of time. Any authorized employee making a purchase under an umbrella purchase order must obtain an invoice, receipt or similar bill of sale from the vendor, and transmit that document to the Finance Department after the purchase is complete.

### B. Blanket Purchase Orders

A blanket purchase order will be issued for any contract for which multiple payments are required. The blanket purchase order will be issued for the amount of the contract.

### C. Individual Purchase Orders

1. An individual purchase order is required for the purchase of any goods or services
2. A properly completed Purchase Order includes: a description of the item to be procured, the quantity needed, unit cost, total cost, and all vendor quotations, where appropriate. The description section shall provide detailed specifications regarding the item to be purchased and, when applicable, when and where the service will be performed or when and where the items will be delivered.
3. The account name and number must be provided by the Department Director or designated Project Manager to determine which account will be expensed when the Purchase Order is invoiced. If the procurement is to be expensed against more than one account code, all accounts must be listed.
4. The procurement staff will assign Purchase Order numbers.
5. Purchases are handled by notifying the vendor of the approved Purchase Order number. The method of purchase shall be specified on the Purchase Order.
6. Vendors shall be instructed to include their Purchase Order number on all correspondence, including packages, invoices, credit memos, etc.

**D. Receipt of Goods/Services and Authorization to Pay**

7. The Department Director or designated Project Manager is responsible for receipt of the physical merchandise ordered. Upon receipt, the packing slip shall be compared to the goods received. If correct, the packing slip shall be signed and dated by the Project Manager and forwarded to the Finance Department to verify against the Purchase Order and authorize payment.
  
8. The Department Director or designated Project Manager is responsible for the receipt of services. Upon completion, the Department Director or designated Project Manager shall match and approve all invoices that confirm the proper completion of services performed and forward the approved invoice to the Finance Department to authorize payment.

## **CHAPTER V - VENDOR PROTEST PROCEDURES**

### **A. Purpose**

The purpose of these procedures is to set forth the procedures to be utilized by CAT in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.

### **B. General**

In order for a bid protest to be considered by CAT, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein). A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by CAT, and will be returned to the submitting party without any further action by CAT. In all instances where CAT receives a protest involving a potential contract that will be funded with Federal Transit Administration funds, CAT will notify the Federal Transit Administration of the protest, provide information concerning the nature of the protest, and keep the Federal Transit Administration informed about the status of the protest.

### **C. Definitions**

For purposes of these Bid Protest Procedures:

1. The term “Bid“ includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
2. The term “contract” means that document to be entered into between CAT and the successful bidder and offeror.
3. The term “days” refers to normal business days of CAT staff offices.
4. The term “interested party“ means any person: who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and whose direct economic interest would be affected by the award of the contract or by failure to award a contract. A subcontractor does not qualify as an “interested party” because it does not have a direct economic interest in the results of the procurement.
5. The term “solicitation“ means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.

**D. Grounds for Protest**

Any interested party may file a bid protest with CAT on the grounds that:

1. CAT has failed to comply with applicable Federal or State Law;
2. CAT has failed to comply with its procurement procedures;
3. CAT has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
4. CAT has issued restrictive or discriminatory specifications; or,
5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

**E. Contents of Protest**

6. A bid protest must be filed in writing and must include:
  - a. The name and address of the protestor.
  - b. The name and number of the procurement solicitation.
  - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of CAT procurement procedures, or specific term of the solicitation alleged to have been violated.
  - d. Any relevant supporting documentation the protesting party desires CAT to consider in making its decision.
  - e. The desired relief, action, or ruling sought by the protestor.
7. Protests must be filed with:

Procurement Manager  
Chatham Area Transit Authority  
900 E. Gwinnett Street  
Savannah, GA 31401
8. All protests must be received at the CAT address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Eastern Time.
9. If any of the information required by this section is omitted or

incomplete, CAT will notify the protestor, in writing, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

#### **F. Timing Requirements and Categories of Protests**

CAT will consider the following categories of bid protests within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five days prior to the scheduled bid opening or deadline for submittal or proposals, as appropriate, in order to be considered by CAT. Any protest based on such grounds not filed within this period will not be considered by CAT. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
2. Any bid protests regarding the evaluation of bids or proposals by CAT, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with CAT no later than 72 hours after the protestor's receipt of CAT's written notice of its decision or intended decision to award a contract. Notice of award shall be made by over-night delivery, email, or facsimile to the successful bidder or proposer. In addition, CAT will notify all unsuccessful bidders or proposers of its intent to award a contract to the successful bidder or proposer at the same time it notifies the successful bidder or proposer if Board approval is not required, or at the same time as the publication of the Board agenda if Board approval is required. Notification to unsuccessful bidders will be made by over-night delivery, email, or facsimile. Any protest filed after such date which raises issues regarding the evaluation of bids or proposals, or the contract approval or award will not be considered by CAT.

#### **G. Review of Protest by CAT**

1. CAT will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, CAT will inform the protestor of any additional information required for evaluation of the protest by CAT, and set a time deadline for submittal of such information. If CAT requests additional information, and it is not submitted by the stated deadline, CAT may either review the protest on the information before it, or

decline to take further action on the protest.

3. In its sole discretion, CAT may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to CAT relative to the merits of the bid protest. CAT will set a time deadline for the submittal of such comments, which will be no less than 5 days after CAT provides notification of the protest.
4. In its sole discretion, CAT may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by CAT in deciding the bid protest if it is submitted to CAT in writing within 3 days after the conference.

#### **H. Effects of Protest on Procurement Actions**

1. Upon receipt of a timely protest regarding either the solicitation process or the solicitation documents in the case of sealed bids, CAT will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless CAT determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, CAT will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
3. Notwithstanding the pendency of a bid protest, CAT reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
  - f. Where the item to be procured is urgently required;
  - g. Where CAT determines, in writing, that the protest is vexatious or frivolous;
  - h. Where delivery or performance will be unduly delayed, or other undue harm to CAT will occur, by failure to make the award promptly; or,
  - i. Where CAT determines that proceeding with the procurement is otherwise in the public interest.

## **I. Summary Dismissal of Protests**

CAT reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by CAT in a previous bid protest by any interested party in the same solicitation or procurement action.

## **J. Protest Decisions**

1. After review of a bid protest by appropriate CAT staff and/or legal counsel, a recommendation shall be made to the CAT Executive Director concerning the appropriate disposition of such protest.
2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and CAT's own investigation and analysis.
3. The decision of the CAT Executive Director shall be in writing and shall be the final binding agency action. Except in exceptional circumstances, the decision of the CAT Executive Director will be issued within 30 days after the date all relevant information is submitted according to the dealings set forth in these procedures.
4. If the protest is upheld, CAT will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation, revised evaluation of bids or proposals or CAT's determination, or termination of the contract.
5. If the protest is denied, CAT will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

## **K. Judicial Appeals**

An interested party adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of Georgia.

1. Federal Transit Administration Appeals (Only if Federal funds are used in the procurement)
  - a. A protestor adversely affected by a bid protest decision of the CAT Executive Director may submit a protest to the Federal Transit Administration (FTA) in accordance with the provisions of FTA Circular 4220.1, as currently in effect as of the date of CAT's decision on the bid protest. A protestor must exhaust its administrative remedies by pursuing CAT's protest procedures to

completion before appealing CAT's decision to FTA.

- b. Under the provision of the FTA Circular, FTA will only review protests regarding the alleged failure of CAT to have written protest procedures, the alleged failure of CAT to have complied with its protest procedures, or CAT's alleged failure to review a protest when presented the opportunity to do so. FTA will not consider every appeal filed by a protestor merely because a Federal law or regulation may be involved. Instead, FTA will exercise discretionary jurisdiction over those appeals involving issues important to FTA's overall public transportation program. FTA will refer violation of Federal law for which it does not have primary jurisdiction to the Federal authority having proper jurisdiction.
- c. In accordance with the FTA Circular, such protest must be filed with FTA's Regional Office no later than five (5) working days after the date when the protestor has received actual or constructive notice of CAT's final decision or within five (5) working days of the date when the protestor has discovered other grounds for appeal to FTA (i.e., CAT's failure to have or failure to comply with its protest procedures or failure to review the protest.
- d. CAT will disclose information on any protest to the FTA and keep the FTA informed of the status.
- e. The Executive Directors decision on protest will be writing.

## CHAPTER VI - CONTRACT ADMINISTRATION

### A. Contract Signatory Authority

The Executive Director/CEO will sign all contracts unless unavailable in which case the contract will be signed in accordance with the adopted Procurement Policies and Procedure.

### B. Procurement Manager Contract Responsibilities

#### 1. Contract Administration File

The Procurement Manager shall administer contracts for goods, services, and revenue contracts. The Procurement Manager shall maintain a contract administration file that, at a minimum, contains:

- a. The executed contract and notice of award;
- b. Documentation of when the contract was executed, the original term of the contract, whether options were included in the contract.
  - i. If an option is to be used, then the Option Justification Form must be completed and kept in the contract administration file.
  - ii. If a new solicitation is needed, it should be started 3-6 months before the current contract expires.
- c. Any applicable performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- d. Contract-required insurance documentation;
- e. Post-award correspondence from or to the contractor or other Governmental agencies;
- f. Notice to proceed;
- g. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- h. Modifications/changes to the contracts, including the rationale for the change, change orders issued, and documentation reflecting any time and/or increases to or decreases from the contract price as a result of those modifications;
- i. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- j. Documentation relating to contract close-out.

#### 2. Contract Procedures

The Procurement Manager shall be responsible for the following contract procedures:

- a. SAM – Prior to entering into a contract for more than \$25,000 with a vendor, the Procurement Manager shall ensure that the vendor is not excluded from participation in federally-funded programs. Such a

determination will be made by using the System for Award Management at [www.sam.gov](http://www.sam.gov).

- b. Notice to Proceed – Work shall not begin on a contract until the Procurement Manager has received all necessary supporting documents and issues a Notice to Proceed to the contractor.

### 3. Contract PO & Payments

The Procurement Manager shall be responsible for the following contract payment processes:

- a. Purchase Order – Once the Notice to Proceed is issued, the Procurement Manager will originate the Purchase Order.
- b. Invoices – The Procurement Manager will ensure that contract invoices are consistent and compliant with contract provisions.
- c. Task Orders – If the contract utilizes task orders, the Procurement Manager will ensure that the task orders are consistent and compliant with contract provisions. The Procurement Manager will also ensure that all task orders are authorized at the appropriate levels required by this procedures.

### 4. Contract Options

If a contract utilizes an option, the Procurement Manager shall maintain documentation in the contract administration file of the following:

- a. Current Price – The price for the current year must be fair and reasonable. Check the contract to see if there is an escalator/de-escalator based on Consumer Price Index (CPI), Producer Price Index (PPI), or pre-agreed escalator/de-escalator amount. If CPI or PPI is the only factor, and the contractor is willing to sign an Exercise of Options to extend the contract for another year at the existing price, submit written documentation supporting that decision.
  - i. If the current vendor does not execute an exercise of option year, then procurement must be resolicited.
    - a. Performance – Whether the contractor has performed as required in the contract. If not, consider resoliciting for a contractor that can perform satisfactorily.
    - b. Scope – The statement/scope of work for the next year. Check with all personnel that may be affected by the contract to verify completeness of the statement of work. Keep in mind, the scope of work must be consistent with the contract and should not include scope creep or cardinal changes.

- c. Federal Clauses & Certifications – Obtain signed federal clauses and certifications for each option year.

### **C. Project Manager Responsibilities**

The Project Manager will approve all invoices before payment is issued.

#### 1. Contract Compliance

The Project Manager is responsible for ensuring that each contractor provides the goods and services specified in the contract in accordance with the terms and conditions of the contract including, but not limited to, product and/or construction specifications. In appropriate circumstances, as determined by the Project Manager, the services of an outside consultant will be retained by CAT to serve as the construction manager for major construction projects.

#### 2. Contract Monitoring

The Project Manager is responsible for monitoring the contract to ensure there is no scope creep, cardinal changes, or tag-ons.

a. Scope creep is when small changes in service levels or commodity purchases are made to multi-year agreements over a period of time, resulting in a large change from the original procurement.

b. Cardinal changes are major deviations from the original purpose 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.

c. Tag-ons are adding quantities on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others and then treating the add-on portion as though it met the requirement of the original competition.

#### 3. Project Progress

The Project Manager must document the progress of the project. If the contract requirements are not being met, the Project Manager must document the areas of non-compliance and discuss these areas with the contractor, document the conversations with the contractor, and document any corrective actions.

### **D. Federal Procurement Requirements**

Since CAT receives FTA capital assistance, federal procurement requirements apply to all

federally funded capital procurements. Some of these requirements are unique and pertain only to federally funded procurements. Listed below are those specific contract terms and/or regulatory or administrative requirements that only apply when federal funds are being utilized for the procurement. Note that the requirements of the Americans with Disabilities Act, the equal opportunity provisions of the Civil Rights Act of 1964, as amended, and the FTA's Drug and Alcohol Testing Requirements (49 CFR Parts 655) apply to all procurements (if applicable) even if Federal funds are not utilized.

1. State or local geographic preferences, except those expressly mandated, encouraged, or permitted by Federal statute, are prohibited. Geographic location may be a selection criteria for A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
2. For procurements over \$150,000, the Buy America requirements set forth in 49 CFR part 661 apply.
3. Any procurement involving equipment, materials, or commodities suitable for transport by ocean vessel shall contain the clauses required by 49 CFR Part 381: Cargo preference - U.S. Flag Vessels.
4. In the procurement of rolling stock, the requirements of 49 CFR Part 663 concerning Pre-Award and post-Delivery Audits apply.
5. In the procurement of buses, the requirements of 49 CFR Part 665 concerning Bus Testing apply.
6. For public works/construction projects, the requirements of 49 CFR Part 41(specifically Part 41.117: Seismic safety) apply.
7. For public works/construction projects or activities exceeding \$2,000, the requirements of the Davis-Bacon Act (40 U.S.C. 276a - 276a(7)) and implementing Department of Labor regulations apply.
8. For public works/construction projects in excess of \$2000, the provision of the Copeland Anti-Kickback Act (40 U.S.C. 276c) and implementing Department of Labor regulations apply.
9. For public works/construction projects, the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-222) and implementing Department of Labor regulations apply.
10. For any contract of over \$100,000, the third party contractor will be required to complete and submit certification forms, and, if appropriate, lobbying disclosure forms concerning compliance with 31 U.S.C. 1352.

11. Each third party contractor must acknowledge that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose penalties under the Program Fraud Civil Remedies Act of 1986.
12. Each third party contractor is required to acknowledge the mandatory standards and policies related to every efficiency that are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et. seq.).
13. For public works/construction projects, each third party contractor must agree to comply with any federal environmental and resource conservation requirements that apply to the construction activities under the terms of the Contract. The contractor is required to report any violation of standards, orders or regulation issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.) resulting from any activity of the contractor in connection with the performance of the contract to FTA and to the appropriate U.S. EPA regional office. The contract is responsible for the disposal of hazardous materials, in accordance with applicable federal, state and local law and guidelines.
14. Each third party contractor for contracts over \$25,000 must certify that they will not enter into contracts for over \$25,000 with suspended or debarred contractors (Executive Order 12549; 49 CFR part 29).
15. Each third party contractor must comply with Civil Rights requirements concerning nondiscrimination and equal employment opportunity (29 U.S.C. 623; 42 U.S.C. 2000, 6102, 12112; 12132; 49 U.S.C. 5332; 29 C.F.R. Part 1630; 41 C.F.R. Parts 60 et. Seq.).
16. Each third party contractor must comply with appropriate Patent and Rights in Data requirements (37 C.F.R. Part 401 and 49 C.F.R. Part 18).
17. Each third party contractor must comply with the Department of Transportation Disadvantaged Business Enterprise (DBE) regulations (49 C.F.R. Part 26).
18. Fly America. Each third party contractor must comply with 49 U.S.C. 40118 in accordance with the General Service Administration's regulations at 41 CFR Part 301-10.
19. CAT shall ensure that contractors working on a capital project funded with federal assistance will give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have

the requisite skills and abilities to perform the construction work required under the contract. This requirement shall not be understood, construed or enforced in any manner that would require a contractor, or any employer, to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

20. For any FTA assisted project having third party construction contracts exceeding \$150,000, FTA's Buy America law and regulations require the third party contractor to provide property produced or manufactured in the United States for use in the construction project that the recipient acquires, unless FTA has granted a waiver authorized by those regulations. Procurement staff will complete a Buy America pre-award review to ensure compliance with these regulations and document this review in the permanent procurement file.
  
21. (A.) A contract to acquire rolling stock will include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m). CAT procurement staff will ensure that a pre-award audit is completed before CAT enters into a formal contract for the purchase of such rolling stock. A pre-award audit under this part includes:
  - (1) A Buy America certification as described in 49 CFR 663.25;
  - (2) A purchaser's requirements certification as described in 49 CFR 663.27; and
  - (3) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in 49 CFR 663.41 or 49 CFR 663.43.
  
- (B.) Additionally, a contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m). CAT procurement staff will ensure that a post-delivery audit is completed before title to the rolling stock is transferred to the CAT. A post-delivery audit under this part includes:
  - (1) A copy of the Altoona Bus Testing Report;
  - (2) A post-delivery Buy America certification as described in 49 CFR 663.35;
  - (3) A post-delivery purchaser's requirements certification as described in 49 CFR 663.37; and
  - (4) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described 49 CFR 663.41

or 49 CFR 663.43 of this part.

**E. Bonding Requirements**

1. Purpose

To ensure uniform and equitable application of bonding requirements in compliance with state and federal regulations, and protect the interests of CAT.

2. Responsibility

It shall be the responsibility of the Chief Financial Officer to ensure that these guidelines are followed and applied impartially.

3. Types of Bonds

a. Bid Guarantee: This shall consist of a firm commitment, such as a bid bond, certified or cashier's check, or other negotiable instrument accompanying a bid as assurance the bidder will, upon acceptance of the bid by CAT, execute such contractual documents as may be required within the time specified. CAT will require bid bonds for all public works/construction projects in excess of \$100,000 for any equipment or services contract of a critical nature to the operations of CAT, or for any equipment contract in which the equipment is specifically manufactured for CAT. Public works/construction projects require a bid bond of five (5) percent of the amount bid. Equipment purchases and service projects requiring a bid bond will have a bond requirement of five (5) percent of the amount bid. CAT will require proposal bonds for any equipment or services contract of a critical nature to the operations of CAT. Service projects requiring a proposal bond will have a bond requirement of up to five (5) percent of the amount bid. Failure of bidders to comply with these requirements will result in a determination by the procurement staff that the bid is non-responsive.

b. Performance: This is a bond executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract. Performance bonds shall be written by a corporate surety registered in the County of Chatham in the State of Georgia. CAT will require performance bonds for all public works/construction projects in excess of \$100,000, for any equipment or services contract of a critical nature to the operations of CAT, or for any equipment contract in which the equipment is specifically manufactured for CAT. Public works/construction projects require a performance bond of 100 percent of the amount of the contract.

Equipment purchases requiring a bond will have a bond requirement of 100 percent of the amount of the contract. Service projects requiring a bond will have a bond requirement of up to 100 percent of the amount of the contract.

- c. Payment: This is a bond executed in connection with a Contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bonds shall be written by a corporate surety registered in the County of Chatham in the State of Georgia. CAT will require a payment bond for public works/construction contract over \$100,000. The required payment bond will be the contract amount for labor and materials.

4. Procedures

Bid guarantees, performance bonds, and payment bonds are required by the State of Georgia for all public works/construction projects in excess of \$100,000.

Bid guarantees and/or performance bonds are not required unless the procurement involves equipment or services of a critical nature to the operations of the agency and/or is specifically manufactured for the agency thereby making procurement from another source difficult or time consuming. Payment bonds are not required under these circumstances.

Required bonding levels are:

<b>Type of Project</b>	<b>Type of Bond</b>		
	<b>Bid</b>	<b>Performance</b>	<b>Payment</b>
Public Works/Construction (as applicable)	5%	100%	100%
Materials and Equipment	5%	100%	100%
Services (except for personal or professional)	5%	100%	100%

5. Forfeiting of Bonds

All contracts that contain bonding requirements shall contain a clause allowing termination on default of the contractor and providing that in such cases the surety company shall bear the responsibility for the completion of the contract, or if no surety company has provided a performance bond, CAT will claim the alternate to the performance and payment bond and use such funds for the completion of the contract.

**F. Insurance Requirements**

1. Insurance requirements vary depending on the project type. They may include provisions for personal injury, environmental liability and other areas. The insurance requirements for each project are established by CAT.
2. In assessing risk, CAT will consider the following project information:
  - i. Scope of work.
  - ii. Contract amount.
  - iii. Whether the project requires the contractor to operate on CAT property.
    - d. The ultimate use of the goods or service provided by the contractor.
    - e. Previous experience associated with similar or related projects.
3. Once the insurance requirements are defined, they must be included in the procurement document.
4. Prior to issuing the final contract, the Chief Financial Officer will request that the Executive Director approve the insurance certificate and signify his or her approval by a written memo to the Chief Financial Officer. A copy of this memo and the insurance certificate are to be kept in the project file.
5. The Procurement Manager shall not allow any contract to continue without proper insurance in effect after notification of the lapse of requisite insurance.

**G. Liquidated Damages**

1. The Chief Financial Officer and the Project Manager will determine whether the use of a liquidated damages provision is appropriate for each specific procurement. The amount of liquidated damages must be reasonable, shall be set at a specific rate for each day of overrun in contract time for a public works/construction contract or for delivery of goods, or for each instance of an incident giving rise to imposition of liquidated damages in a service contract, and the rate must be specified in the contract. If liquidated damages are assessed in a Federally funded contract, the Chief Financial Officer in consultation with the Finance Manager will ensure that, as appropriate, the liquidated damages recovered are credited to the project unless the Federal Transit

Administration permits otherwise.

2. A liquidated damages clause may be used if it is determined that:
  - i. The time of delivery of goods or services to CAT is critical, and CAT can expect to suffer damage if the delivery is delinquent.
  - ii. The extent or amount of such damage would be difficult or impossible to determine.

#### **H. Indemnification**

All contracts shall provide that the contractor indemnify and hold harmless CAT, Board Members, officers, agents, management consulting staff, and other consultants or contractors as appropriate from any injuries and or damages received by any person during any operations connected with the Contract, by use of any improper materials, or by any act or omission of the Contractor or his subcontractor, agents, servants or employees.

#### **I. Termination for Convenience**

All contracts shall contain a provision allowing for the termination of the contract for convenience by CAT and prescribe methods in which the contractor may calculate cost of work already performed, and termination settlement costs. All contracts supported by federal grants that exceed \$10,000 are to include provisions that allow CAT to terminate the contract, and that stipulate the manner by which termination will be made and the basis for settlement.

#### **J. Dispute Resolution**

All contracts shall contain provisions providing that any dispute between the contractor and CAT relating to the implementation or administration of the contract in question be resolved in accordance with a dispute resolution process set out in the contract.

#### **K. Project Control File**

The project control file shall be maintained during the procurement process, throughout the term of the contract and for three years following completion of all work.

The control file consists of the following sections:

1. Vendor list.

2. Rationale for type of procurement used.
3. List of all vendors responding to the procurement.
4. All documentation relating to the selection process, including, but not limited to: evaluation score sheets, bids, rationale for selection and/or rejection of respondents, and the source selection plan.
5. Notice to proceed.
6. Final contract (including notation of contract type).
7. Board of Commissioners report, if required.
8. Purchase Requisition.
9. All correspondence.
10. Proof of insurance.
11. Bond documents.
12. Notice of Solicitation.
13. Legal advertisement.
14. Original procurement document and all addenda.
15. Original responses to the procurement.
16. DBE information.
17. Returned mail.

**L. Vendor File**

1. The Vendor File consists of a listing of businesses, organizations, and enterprises that could provide quality goods and services specific to CAT.
2. A vendor may be declared “not responsible“ and removed from the Vendor File if the vendor:
  - i. Repeatedly misses deadlines in deliveries of goods and services.
  - ii. Provides unsatisfactory goods and services.
3. Before declaring a vendor to be “not responsible,” the Chief Financial Officer will make effort to give the vendor an opportunity to correct the problem. The following steps must be followed:
  - i. Notify vendor of possible disqualification from vendor list
  - ii. If no response to the first notice is received, issue a second notice
  - iii. If no response to the second notice is received, the third notice will be issued informing the vendor that it has been deemed “not responsible“ and removed from the Vendor file effective ten days from the date of the third notice.
4. A file will be kept of all activity and communications with the vendor. All actions must be fully documented and the file will be retained for a period no less than two years.
5. In order for a vendor to be reinstated into CAT’s Vendor File, the

vendor must file a request with the Chief Financial Officer in writing declaring to be a “responsible vendor.”

6. The reinstatement letter must include the following:
  - i. Reason vendor failed to respond to procurement requests.
  - ii. Reason vendor provided slow or unsatisfactory deliveries.
  - iii. Steps vendor has taken to eliminate slow or unsatisfactory deliveries.
  - iv. Statement why vendor should be reconsidered as a responsible vendor.
  - v. Promise to maintain their responsible vendor status.

#### **M. Types of Contracts and Payment Terms**

- a. Except as provided in this section, any type of contract which will promote the best interest of CAT may be used. A type of contract other than firm, fixed-price may be used only when a determination is made by the procurement staff that such contract is likely to be less costly than the firm, fixed-price contract or that it is impractical to obtain the supplies, services or construction required by the firm, fixed-price contracting method. Contract type determination will be documented in the procurement file.
- b. A firm, fixed-price contract establishes a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract.
- c. A cost-reimbursement contract is one in which the contractor is paid its reasonable, allocable and allowable costs of performance regardless of whether the work is completed.
- d. A time and material contract can be used only:
  1. After a determination by the Chief Financial Officer that no other type of contract is suitable; and
  2. If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.
- e. Cost plus percentage of cost contracts are prohibited.
- f. Advance payments utilizing Federal Transit Administration funds are prohibited unless prior written concurrence is obtained from the Federal Transit Administration.
- g. Progress payments will only be made on the basis of costs incurred or, in the case of construction contracts or certain major acquisition contracts, on the basis of

percent of completion or major milestones completed or major components procured. In such cases, the Chief Financial Officer will ensure that the contract provides that CAT obtain adequate security including taking title to major components, letters of credit or equivalent means to protect CAT's interests.