

**TWIN CITIES AREA TRANSPORTATION AUTHORITY
PROCUREMENT GUIDELINES**

POLICY STATEMENT

It is the intention of the Twin Cities Area Transportation Authority (TCATA) to procure necessary services, materials, supplies, equipment and other items in a fashion which affords for compliance with applicable Federal, State and local regulations standards. Further, TCATA requires that such procurement will be made in a manner that provides for the most economical expenditure of the limited funding available. To this end, these policies are intended to follow the standards of Federal Transit Administration (FTA) Circular 4220.1D, and applicable criteria in the FTA “Best Practices Procurement Manual” in all third party contracting. As such, these procurement guidelines are taken from FTA Circular 4220.1D and related circular, i.e.; 9030.1B, etc. These procurement guidelines shall be used in conjunction with FTA Circular 4220.1D in all procurement.

ETHICAL CONDUCT

I. TCATA will not allow employees, officers or agents engaged in the selection, award and administration of contract to participate in such selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. The following identifies where such a conflict may arise:

- (a) The employee, officer, or agent, or
- (b) Any member of his/her immediate family, or
- (c) His/her partner, or
- (d) An organization who employs, or is about to employ any of the above has a financial or other interest in a firm which may be selected for award.

II. TCATA will not allow its employees, officers or agents to solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Such acceptance of any of the above listed items shall be deemed cause for disciplinary action up to, and including termination, as determined by the Authority’s Board, the Federal Transit Administration, or the Michigan Department of Transportation, as well as possible legal sanctions as deemed appropriate under applicable statute.

III. TCATA will not allow its employees, officers or agents to engage in any activity which shall result in an unfair competitive advantage to any contractor’s objectivity in performing contracted work.

PROCUREMENT REQUESTS

- I.** TCATA's staff and management shall review, at least annually, the proposed procurement to avoid unnecessary or duplicate items. Such review shall give consideration to consolidation or breaking out procurement to obtain the most economical purchase. Lease consideration will be given to those items which may offer an economical advantage over a purchase.
- II.** TCATA's staff and management will consider use of other Federal, State or local surplus property in lieu of purchasing when such use is feasible and reduces project costs.
- III.** TCATA will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such items as contractor integrity, compliance with public policy, past performance, financial and technical resources.
- IV.** TCATA will maintain sufficient records to detail the history of a procurement. Such records shall include method of procurement, selection of contract type, contractor selection (or rejection), and the contract price.
- V.** TCATA will maintain good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to, source evaluation, protests, disputes, claims as necessary. These practice and sound business guidelines shall be in accordance with applicable statute, including FTA management guidelines in Circular 5010.1B
- VI.** TCATA shall provide for bid protests or disputes to be submitted as identified under Section 19 "Disputes" of the TCATA's Bid Conditions and Instructions, with the Administrative Director as the first administrative procedure. If a contractor, or potential contractor submits an appeal in writing, the General Manager shall review the protests and appeal and base a decision on the submitted information. If the contractor or potential contractor so desires, they may submit a protest of the TCATA's dispute procedures for review to FTA at the Regional office.

COMPETITION

- I.** TCATA will conduct all procurement in a manner to provide full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:
 - (a) Placing unreasonable requirements on firms in order for qualification;
 - (b) Requiring unnecessary experience and excessive bonding;

- (c) Noncompetitive pricing practices between firms and or between affiliated companies;
- (d) Noncompetitive awards to professionals and other consultants that are on retainer contracts;
- (e) Organizational conflicts of interest;
- (f) Specifying only a 'brand name' product instead of allowing 'an equal' product to be offered, and/or specifying performance or other salient characteristics of the brand name product;
- (g) Any arbitrary action in the procurement process;
- (h) Use of statutorily or administratively imposed "local" geographical preference;
- (i) Failure to incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurement, contain features that unduly restrict competition.

II. TCATA will provide a clear and accurate description of all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals. Such clear and accurate description shall include the description of the technical requirements of the material, product or service being sought.

METHOD OF PROCUREMENT

I. Micro & Emergency Purchases – pursuant to C 4220.1D, TCATA may make micro purchases which do not exceed \$3,000.00 without competitive procurement quotations **if** the TCATA believes that the price is fair and reasonable. In addition, emergency situations which require repairs which are reasonably believed to be under \$3,000.00 may be authorized without competitive quotations.

- (a) A written determination as to why price is deemed fair and reasonable must be on file with each purchase made under this method of procurement.
- (b) Splitting of procurements to avoid the competitive procurement requirements of federal and state statues shall not be condoned.

II. Small Purchase Procurement – for supplies, materials and services which shall not cost more than \$100,000 in the aggregate. Such procurement shall be made in the following manner:

- (a) A minimum of two price or rate quotations shall be obtained from qualified sources;
- (b) The procurement will be made from the lowest priced qualified bid, if products or goods are equal;
- (c) If a procurement is established as DBE set-aside, a minimum of three price or rate quotations shall be obtained from qualified DBE sources. In addition, one price quote from a non-DBE firm shall be obtained to ensure that competitive prices are secured. The procurement will be made from the lowest priced DBE bid unless the non-DBE firm is substantially lower. In such a case, FTA will be advised of the price quotes with a request for release of the DBE “set-aside” and to procure from non-DBE firms.

III. Sealed Bid Procurement – for supplies, materials and services over \$100,000 in the aggregated, or when sealed bid procurement will provide for the best competitive pricing for those procurement under \$100,000 in the aggregate. Such procurement shall be made if the following is available;

- (a) A complete, adequate, and realistic specification or description is available.
- (b) Two or more responsible bidders are willing and able to compete effectively for the business.
- (c) The Procurement lends itself to a firm fixed price contract and the selection of a successful bidder can be made principally on the basis of price.

Sealed bids will be performed in the following manner:

- (a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, with sufficient time prior to the date set for bid opening;
- (b) The invitation for bids will include any and all specifications and pertinent attachments, and shall define the items or services sought in order that the bidders may properly respond;
- (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (d) A fixed-price contract awards will be made in writing to the lowest responsive and responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determination of the lowest bid. Payment discounts will only be used to determine the low bid when prior

experience indicates such discounts are usually taken advantage of;

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

IV. Competitive Proposal Procurement – for supplies, materials, and services with more than one source submitting a proposal, and either a fixed price or cost reimbursement type contract is to be awarded. This will generally be used when conditions are not appropriate for the use of sealed bids. Competitive proposal shall be honored to the maximum extent practical;

- (a) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (b) Proposals will be solicited from an adequate number of qualified sources when possible;
- (c) TCATA will make the evaluation and selection without negotiation with any offeror. However, TCATA, if it decides to conduct negotiations, will negotiate with all offerors in a complete range, i.e., all offerors that TCATA determines have a reasonable chance of selection for award based on cost or price and other specified factors of the solicitation;
- (d) The award will be made to the responsible firm whose proposals is most advantageous to TCATA's program with price and other factors considered;
- (e) TCATA will use competitive proposal procedures for qualifications-based procurement of architectural and engineering services, or related services such as program management, constructions management, feasibility studies, preliminary engineering, design, surveying, mapping, or related service, and may use this procurement method for rolling stock.
- (f) TCATA will follow the guidelines of FTA Circular 4220.1D for qualifications of this type of procurement.
- (g) TCATA will use the Small Business Element of FTA Circular 49CFR26.39 set-asides to foster small business. Documentation of estimated cost will be used to insure the small business price is competitive.

V. Sole Source Procurement – may be use through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate, or it is difficult to compare offers due to questions of quality of integral parts of the items for procurement. A contract amendment or change order that is

not within the scope of an original contract is a sole source procurement, and therefore, must comply with the following:

- (a) Sole Source Procurement may be used only when the award of a contract infeasible under small purchases procedures, sealed bids, or competitive proposal and at least one of the following circumstances applies;
 - (1) The items is available only from a single source;
 - (2) A public emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) FTA authorized noncompetitive negotiations;
 - (4) After solicitation of a number of sources, competition is inadequate;
 - (5) The item is an associated capital maintenance item as defined in Section 9 (j) of the Federal Transit Act that is procured directly from the original manufacturer or supplier of the item to be replaced.
 - (6) TCATA must first certify in writing to FTA (a) that such manufacturer or supplier is the only source for such item; and (b) that the price of such item is no higher than the price paid for such item by like customers.
 - (7) Cost analysis, verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit are completed as required under FTA Circular 4220.1D.

CONTRACTING WITH DBE, WBE, SMALL AND MINORITY FIRMS

I. TCATA will take all necessary affirmative steps to assure that minority firms, WBE, and labor surplus area firms are used when possible. TCATA will follow FTA Circulars 4220.1D and 4716.1A to assure that minority firms, WBE and labor surplus area firms are utilized when possible.

CONTRACT COST AND PRICE

I. TCATA will perform a cost or price analysis in connection with every procurement action, including contract modification.

II. TCATA will negotiate profit as a separate element of the price for each contract in which there is not price competition, and in all cases where cost analysis is performed. To established fair and reasonable profit, consideration will be given to such things as the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates for similar work.

III. TCATA will only allow costs or prices based on estimated costs for contracts under grants to the extent that costs incurred or costs estimates included in negotiated prices are consistent with Federal cost principles.

V. TCATA will not allow or contract under any “cost plus” or “cost plus a percentage” methods.

BONDING REQUIREMENTS

I. TCATA will require bonding of the contractor for construction or facility improvement contracts or sub-contracts in excess of \$100,000, or if TCATA deems bonding requirements are appropriate for other contracts due to the circumstance of the projects. The minimum requirements for constructions contracts shall be as follows:

- (a) Bid guarantee equivalent five percent (5%) of the bid price of each bidder. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- (b) Performance bond equivalent to one hundred percent (100%) of the contract price. The performance bond is one executed in connection with a contract to secure fulfillment of all the contractor’s obligation under such contract;
- (c) Payment bond equivalent to one hundred percent (100%) of the contract price. The payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract.

OPTIONS

I. TCATA will comply with options only as necessary and shall be conditioned as required under FTA Circular 4220.1D, and only after FTA approval.

CARGO PREFERENCE

I. TCATA will impose 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 cargo preference requirements on any shipment of foreign made goods.

BUY AMERICA

I. TCATA will comply with the Buy America provisions of Section 165 of the STAA of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform

Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 for its procurement of any foreign products and materials.

LOBBYING

I. **Prohibition Against the use of Federal Funds for Lobbying** – Regulations set forth in 49 CFR Part 20, prohibit the use of Federally appropriated funds to pay for influencing or lobbying with Federal government officials. Further, Federal grantees and contractors are required to certify compliance with prohibition **and** to disclose certain lobbying activities conducted with non-Federally appropriated funds. The TCATA will require that lobbying certifications be signed and submitted with any bid/proposal on a Federally funded contract exceeding \$100,000:

SUSPENSION & DEBARMENT

DEBARRED BIDDERS: The Federal government will not allow federal assistance funds to be utilized by the Authority with entities which are either debarred or suspended by the Federal government. The TCATA will provide that Bidders, by submitting a bid for consideration by the Authority, must affirm that neither bidder, nor any officer or controlling interest holder of bidder, is currently, or has been previously on any debarred bidders list maintained by the United States Government. Both the **primary contractor** and any **lower-tier participants** will be required to certify that they are not debarred or suspended, or proposed for debarment or otherwise ineligible for participation in this project and must do so utilizing the appropriate federal debarment certification.

ADVANCE PAYMENTS

I. TCATA will not authorize any payment to a contractor prior to incurred costs by the contractor.

PROGRESS PAYMENT PROVISIONS

I. TCATA shall only use Progress Payment clause on accordance with the FTA Circular 4220.1D criteria.

LIQUIDATED DAMAGES PROVISIONS

I. TCATA will utilize Liquidated Damages Provisions when the following circumstance occurs;

- (a) The time of delivery is of such importance that TCATA can reasonably expect to suffer damage if the delivery is delinquent;
- (b) TCATA determines that the delivery schedule is reasonable at the time of award;
- (c) Damages would be difficult or impossible to establish.

II. TCATA determines that a Liquidated Damages clause is necessary in a contract; it shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary.

FTA PRE-AWARD REVIEW OF THIRD PARTY CONTRACTS

I. TCATA will submit to FTA, at FTA's request, any technical specifications on proposed procurement where FTA believes such review is needed.

II. TCATA shall submit to FTA, prior to award, all required documentation for the following types of procurement that exceed one hundred thousand dollars (\$100,000):

- (a) Procurement by noncompetitive negotiation (sole source);
- (b) Procurement in which a single bid or offer is received;
- (c) Procurement that TCATA proposes to award to other than the apparent low bidder;
- (d) Procurement that specify a "brand name" product.

III. TCATA shall submit the required documentation listed in FTA Circular 4220.1D to FTA's Chicago, Regional office after TCATA has determined to who it proposes to award the contract except where a "brand name" solicitation is used; TCATA will submit such "brand name" documentation prior to solicitation.

STATUTORY AND REGULATORY REQUIREMENTS

I. TCATA will comply with all related Federal requirements applicable to the FTA program as set forth in attachment A of FTA Circular 4220.1D.

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