



METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

CONTRACTING MANUAL

REVISED FIFTH EDITION (5.1)

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FOREWORD

The Metropolitan Washington Airports Authority's (Airports Authority or Authority) Contracting Manual (Manual) sets forth the contracting policies governing the procurement of goods and services, including concessions and construction, for Ronald Reagan Washington National Airport, Washington Dulles International Airport (Airports), the Dulles Toll Road, and until completed, the Metrorail Silver Line extension. The Manual includes, in Chapter 10, contracting procedures for award of Federal Transit Administration (FTA) assisted Contracts.

A comprehensive guide for the Authority's practice of procurement and contracting, the Manual underscores an unwavering commitment to core values of Integrity, Collaboration, Mutual Respect, and Pride, as well as Diversity, Inclusion, and Equity at all levels of the organization. Successful contracting requires ethical behavior; teamwork across multiple parties; support, engagement, and confidence of the business community; and fair treatment of all.

The Manual is not applicable to real estate transactions, sponsorships, grants, and Airline Use and Lease Agreements or other similar arrangements with the airline carriers operating at the Airports, nor is it applicable to businesses that provide goods or services to air carriers or airport tenants, such as in-flight caterers, fuel providers, and other similar businesses.

This Revised Fifth Edition of the Manual (Edition 5.1) is effective September 1, 2023, and supersedes all prior versions of the Manual.



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CHAPTER 1: CONTRACTING AUTHORITY

1.1 INTRODUCTION

This Manual is issued by the Chief Executive Officer (CEO) at the direction of the Airports Authority's Board of Directors (Board). This Manual is designed to establish the Authority's procurement policies and guide staff in implementing fair and ethical procurement practices for the cost-effective acquisition of goods and services, including construction services, and concessions Contracts (Contracting Activities).

The Authority is committed to obtaining, to the maximum extent practicable, full and open competition for such Contracting Activities, and such Contracting Activities shall be subject to the terms of this Manual. Procurements funded with federal, state, or local funds shall be guided by the Manual except as necessary to conform to the requirements of the funding source, provided that such conformance does not violate the terms and conditions of other applicable federal, state, or local laws.

Chapter 10 of this Manual specifies certain requirements with regard to Contracts that are funded in whole or in part with funds provided by the Federal Transit Administration (FTA). With regard to any such Contract, the Authority and its Contracting Officers shall comply with the provisions of this Manual as well as the applicable requirements of the FTA.

Appendices A, B, and C address Definitions, Purchase Order & Contract Types, and Applicability of FTA Contract Clauses, Model Federal Contract Clauses and Forms, respectively.

Neither the provisions of this Manual nor any deviation from them is intended to nor shall they create any rights in third parties, including, but not limited to, the Authority's Offerors, Contractors, suppliers, or service providers, except as expressly provided.

1.1.1 Goods and Services Not Requiring Competitive Procurement

The Airports Authority has determined that it is not commercially practicable to engage in competition for the following types of goods and services:

- (1) Alternative dispute resolution services, including the services of arbitrators, mediators, debarment hearing officers, and others associated with alternative dispute resolution processes.
- (2) Copyrighted materials purchased directly from the publisher or copyright holder.
- (3) Employment advertising.
- (4) Advertising in specialized publications or media, such as foreign language, trade or professional publications; advertising via radio, television, internet, print or other media, where the advertising is directed at a specific audience, reader demographic or geographic area.
- (5) Expert witnesses for potential and actual litigation, including administrative and quasi-judicial proceedings.



- (6) Venues and related services (e.g., caterers and audio-visual support) for non-recurring conferences, meetings, and training sessions.
- (7) Goods and services reimbursable under the Authority's Business Expense and Travel Policy Directives.
- (8) Insurance policies obtained using the services of an insurance broker whose services were secured in accordance with the Manual.
- (9) Airline marketing and joint marketing agreements (e.g., Cherry Blossom Festival or Smithsonian Folklife Festival).
- (10) Memberships, dues, or fees of organizations of which the Authority, its directors or employees are members.
- (11) Art, exhibits, or performances, including entertainment, speeches, cultural and artistic presentations, at Authority facilities or Authority-sponsored events.
- (12) Regulatory and other governmental permits, licenses, inspections, certifications, and similar authorizations or approvals.
- (13) Postage, mailing, and shipping services.
- (14) Publications and subscriptions.
- (15) Registration and associated costs for participation in conferences, workshops, seminars or similar events, development or certification programs or opportunities for individuals or small groups (i.e., not Authority-wide).
- (16) Renewal of maintenance agreements, subscriptions, or licenses for proprietary software or systems previously procured in accordance with the Manual.
- (17) Exhibits and space at conventions and trade shows.
- (18) Services of lecturers, speakers, trainers, facilitators, and scriptwriters, when the provider possesses specialized training methods, techniques, or expertise in the subject matter.
- (19) Credit rating agency services.
- (20) Intergovernmental Agreements.
- (21) Utility and cable network services, but only to the extent that such services are available from one actual, or one practicable, source. When a utility or cable network service consists of two parts, such as distribution and supply, and one part can be competitively procured, the Contracting Officer should procure that part in accordance with the Manual unless the cost of such part is de minimis relative to the overall expenditure for such service.

Regarding the foregoing items, a Contracting Officer is not required to conduct a competitive procurement or receive Board approval prior to acquiring such goods and services and executing an agreement, regardless of dollar value. Payment for such goods or services is governed by Office of Finance policy.



The Vice President, Office of Supply Chain Management (OSCM) may amend this list of goods and services where competition is not practicable by obtaining approval from the Authority's Board of any additions or deletions from the then-approved list.

1.2 GENERAL POLICY

The Manual provides guidelines for the efficient implementation of the Airports Authority's general procurement policies. These policies are designed to ensure that all procurements:

- (1) Are made in an ethical manner that is impartial and above reproach.
- (2) Are designed and conducted to achieve meaningful competition.
- (3) Are made without restrictive specifications that limit meaningful competition.
- (4) Include reasonable efforts to increase the opportunity for participation by business enterprises eligible under the Authority's supplier diversity programs.
- (5) Are conducted efficiently and economically for both Authority staff and participating businesses.
- (6) Are funded and approved at the appropriate level.
- (7) If made on a sole source or limited competition basis, are done so only after justification in writing.
- (8) If made on a competitive basis, are done so only to Contractors selected in accordance with the stated evaluation criteria included in the Solicitation.
- (9) Are made only to responsible Contractors.
- (10) Are made within a Contract management system, for which the OSCM is responsible. This system, which consists of procurement policies and processes, ensures, at a minimum, that:
 - (a) Solicitations and Contracts are properly issued.
 - (b) The methods of Contractor selection and Contract type are appropriate to the procurement and represent the Authority's best interests.
 - (c) Appropriate provisions required to protect the Authority's interests are included in each Contract.
 - (d) Contractors perform in accordance with the terms and conditions of their Contracts.
 - (e) Payments are made only for goods and services received and authorized in the Contract.

1.3 AUTHORITY

This Manual has been adopted by the Board pursuant to the Board's authority "to make and enter into all Contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the traveling public and airport users, and such Contracts shall be exclusive or limited when it is necessary to further the public



safety, improve the quality of service, avoid duplication of services, or conserve airport property and the airport environment" under the relevant provisions of the Airports Authority's organizing statutes. (See Va. Code §5.1-156; D.C. Code §9-905).

1.4 DELEGATION OF CONTRACTING AUTHORITY

1.4.1 Authority of the Board

The legislation that created the Airports Authority vests the Board with full legal authority for Contracting. The Board has delegated certain Contracting authority to the CEO; however, the Board has reserved the right to approve: (i) Contracts to acquire goods and services at a cost of \$3,000,000 or more (including the cost of all option years); (ii) concessions Contracts or leases that will result in annual revenue to the Authority of \$3,000,000 or more; and (iii) any Contract entered into through less than full and open competition at a value of \$200,000 or more (including the value of all option years).

1.4.2 Authority of the CEO

The Board has delegated to the CEO the authority to acquire the full range of goods services and construction needed to operate and maintain the Airports and Dulles Toll Road, including the authority to enter into and administer Contracts for such acquisitions that bind the Airports Authority, subject to and in accordance with the conditions and limitations in the Board's delegation. All competitively offered construction Contracts are fully delegated to the CEO. The Board has also authorized the CEO to grant an extension of up to twelve months of any concessions Contract necessary to maintain services and revenue during periods when timely award of a new Contract cannot be made before the expiration of the current one, provided that the Business Administration Committee is notified of the need to grant such extensions at the earliest possible occasion before they are granted.

1.4.3 Delegations from the CEO

Subject to such restrictions as may be adopted by the Board, the CEO may delegate certain Contracting authority to employees holding designated positions within the Airports Authority provided that any such delegation or re-delegation shall be made in writing pursuant to a written delegation. The CEO has the authority to rescind or amend any such delegation.

1.4.4 Re-delegation of Contracting Authority

Only persons with a written delegation of Contracting authority may enter into Contracts and related contractual instruments, such as Contract modifications, change orders, Task Orders, delivery orders, and Purchase Orders, on behalf of the Airports Authority.

Documentation of all Contracting authority re-delegation shall be maintained by the staff members making such re-delegation. The OSCM shall keep a centralized record of all delegations and re-delegations of Contracting authority.

All persons delegated Contracting authority shall receive formal procurement training.



1.5 PROCUREMENT FORECAST & QUARTERLY REPORTS

1.5.1 Procurement Forecast

The procurement forecast is designed to ensure that offices requiring goods and services, including concessions and construction, at a value of over \$50,000, including option years, identify their needs and begin to plan for the procurement of the goods and services and their inclusion in the Authority's annual budget, well in advance of their actual procurement.

Every Authority office shall provide a procurement forecast in accordance with instructions from the OSCM. Personnel from each office, using its forecast, work with OSCM personnel to develop a comprehensive Contracting plan to meet the office's needs. The goal of this process is to ensure the Authority's procurement requirements are met on time and with full consideration of needs, cost, and revenue impacts. The OSCM shall support each office in defining its needs under each planned Contract, determining appropriate participation in the selection process, and in administering the Contract.

1.5.2 Quarterly Reports

A quarterly procurement report shall be made publicly available that lists: (i) acquisitions made during the quarter, including (a) the type of acquisition made, (b) the vendor the Contract was awarded to, (c) the dollar amount of the award, (d) whether full and open competition was used, and if not, the authority under which it was not, (e) the extent of competition (number of Offers received), and (f) the awarding official; (ii) Contract modifications and Task Orders issued during the quarter, including dollar value; (iii) Contract actions approved by the Board during the quarter; (iv) planned procurements for the next quarter; and (v) employees with Contracting delegations and any limits to their authorities. This report shall be made available on the Airports Authority's website: www.mwaa.com.

1.6 STANDARDS OF CONDUCT

The Airports Authority requires all employees and members of its Board to act in the best interests of the Authority at all times and to not engage in conduct that is illegal, dishonest, or brings discredit upon the Authority, or participate in any matter as to which the employee or Board member has a conflict of interest. In particular, employees who obligate the Authority to spend money, approve payments, or make decisions affecting disbursements have a special duty to make recommendations and decisions without prejudice, seeking to obtain the maximum value for the Authority. Additionally, Authority employees and Board members shall safeguard and not disclose any confidential business information or privileged pre-decisional documents associated with Authority procurements.

1.6.1 Codes of Ethics

The Airports Authority's Code of Ethics for Employees and Code of Ethics for Members of the Board of Directors (Codes of Ethics), as they may be amended from time to time, are available on the Authority's website and are hereby incorporated into this Manual as if they were expressly set forth. Employees and members of the Board who violate these Codes of Ethics are subject to sanctions as set forth in the applicable codes.



1.6.2 Contractor Certifications and Disclosures; Employment Considerations

All Offerors for Airports Authority Contracts shall be required to submit with their Offer certain representations and certifications, on a form provided by the Authority, that discloses to the best of their knowledge and belief, any representation, activity, or relationship involving the Offeror or its employees that may give rise to a conflict of interest.

The Authority will evaluate the information provided by the Offeror and, based on the information, may disqualify the Offeror from participating in the Solicitation, may cancel the Solicitation, or take any other action it determines to be in the best interests of the Authority. If it is subsequently determined that an Offeror to which a Contract has been awarded represented or submitted a certification with false or erroneous information or falsely or negligently certified that it had no conflict of interest, its Contract may be cancelled or rescinded, and it may be required to repay the Authority all amounts paid to it under the Contract.

Contractors are advised that the Code of Ethics for Employees imposes certain restrictions on the activities in which employees may engage following their employment with the Authority.

1.6.3 Prohibited Conduct and Procurement Integrity

Airports Authority business shall be conducted in a manner above reproach and with complete impartiality and preferential treatment for none. The following are examples of conduct that is strictly prohibited:

- (1) The Offer or the provision of anything of value, by an Offeror or Contractor, to an Authority employee or a member of the Board with the intent to influence an action or decision to be made by the employee or Board member, or with the intent to compensate or recognize the employee or member for an action or decision that the employee or member has made.
- (2) The disclosure by an Authority employee, Board member or Offeror, other than to persons authorized to receive such information, of Bid or proposal information or source selection information prior to Contract award, except in accordance with this Manual and the Authority's Freedom of Information Policy.
- (3) Use of procurement information by an Authority employee or Board member for personal gain, including in negotiation for future employment outside of the Authority.
- (4) Acceptance of kickbacks, bribes, gratuities, or other similar monetary payments by anyone.
- (5) Participation in a particular matter by those Contracting personnel having a conflict of interest regarding the matter.

All Contracting personnel having decision-making or Contract administration duties shall receive annual procurement integrity training.

Any violations of this chapter may be subject to both supervisory discipline and referral to the Authority's Ethics Officer for investigation.



1.7 RELATIONSHIP TO OTHER LAWS

The Airports Authority is a corporate body, public and politic, established under the laws of the Commonwealth of Virginia and the District of Columbia and authorized by an Act of Congress. The Authority is not a federal agency nor is it a component of the Commonwealth of Virginia or the Government of the District of Columbia. It is not subject to the procurement laws or regulations of either of those jurisdictions, nor is it subject to the Federal Acquisition Regulation (FAR) or the various statutes that generally govern federal procurement. However, as a grant recipient of federal funds, the Authority is required to incorporate mandatory provisions on federally funded Contracts.

1.8 AMENDMENTS

The Board reserves the right to amend, supplement, supersede or replace this Manual from time to time. Any such action shall be made in accordance with the then-applicable requirements for such actions, including, but not limited to, the Airports Authority's bylaws.

The Vice President, OSCM may authorize non-material changes to this Manual and other changes necessary to comply with current policy of the Authority, provided such changes are not inconsistent with achievement of full and open competition. Prior to authorizing any such change, the Vice President should consult with the Office of General Counsel.



CHAPTER 2: SUPPLIER DIVERSITY PROGRAMS

2.1 EQUAL OPPORTUNITY

The Airports Authority's Contracting opportunities are open to all, and it is Authority policy that no person or firm will be discriminated against because of race, color, national origin, sex, or disability in Contract award. Further, Contractors shall not discriminate on the basis of race, color, national origin, sex, or disability in the performance of Authority Contracts.

2.2 DISADVANTAGED BUSINESS ENTERPRISE (DBE)/SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PARTICIPATION

It is the policy of the Airports Authority to seek significant participation in its Contracts by local, small, and disadvantaged business enterprises and enterprises owned by minorities and women. The Authority has two supplier diversity programs for achieving this policy objective. The Disadvantaged Business Enterprise (DBE) program is used for Contracts with federal funding from the Federal Aviation Administration (FAA), FTA, or Federal Highway Administration (FHWA). The DBE program also includes the Airport Concessions Disadvantaged Business Enterprise (ACDBE) program for concessions Contracts. The Airports Authority's Small Local Business Enterprise (SLBE) program is used for non-concessions Contracts that are funded solely by the Authority. The Authority's Department of Supplier Diversity (DSD) within the OSCM is responsible for DBE (including ACDBE) and SLBE program administration.

2.3 DBE PROGRAM

The U.S. Department of Transportation has adopted regulations in 49 CFR Parts 23 and 26, as amended, which implement a DBE program, including ACDBEs. The Airports Authority has adopted a policy to fully implement the federal DBE program and to encourage the participation of socially and economically disadvantaged businesses in federally funded Authority Contracts and in other Contracts subject to the federal DBE program. For purposes of this Manual, all references to DBEs are inclusive of ACDBEs.

2.3.1 Reviews

The Airports Authority establishes goals for DBE participation in accordance with federal regulations. These goals are submitted to the applicable federal agencies for concurrence.

2.3.2 Certifying Entities

Firms interested in Airports Authority DBE Contract opportunities may apply for certification to either of the two entities in the Virginia Unified Certification Program (UCP): the Authority or the Virginia Department of Small Business and Supplier Diversity. Firms certified by other certifying agencies in the United States that are interested in participating on Authority Contracts must also receive certification by one of the UCP certifying entities prior to the Solicitation due date in order to be counted toward the DBE goal on the Authority's Solicitation.



The federal programs do not allow a preference for local businesses; therefore, any Authority certified SLBE wishing to participate on procurements with federal funding must also be certified as a DBE.

2.4 SLBE PROGRAM

Pursuant to Resolution 89-19, the Board adopted a policy establishing the Local Disadvantaged Business Enterprise (LDBE) program, which provides for participation by eligible local small business enterprises in Contracting opportunities that are not federally funded. This program is race and gender neutral. In 2022, the Board adopted Resolution 22-34, changing the program name from “Local Disadvantaged Business Enterprise” to “Small Local Business Enterprise” (SLBE).

2.4.1 SLBE Definition

An SLBE is defined as a small business concern that is organized for profit and is located within a 100-mile radius of the District of Columbia's zero-mile marker. Located means that as of the date of its SLBE application, the business entity has an established office or place of business within a city, county, or town within the 100-mile radius referenced above.

Evidence of whether a business is located within the region includes: (i) an office address within the 100-mile radius that is not a post office box and is not an office principally devoted to the performance of work on a single project, and (ii) the firm's owner, management, or the firm's employees are present and conduct the firm's business on a regular and frequent basis at that address. In addition, the firm must have one or more of the following: (i) a business license or registration to do business locally; (ii) receipts showing payment of local taxes by the business; (iii) current performance of work in the local area; or (iv) other evidence that demonstrates that the business entity has an established local presence, and its local presence is not just in connection with performance of a Contract or project that it has received, or that it anticipates receiving, from the Airports Authority or any other entity. A residential address will not be considered an office address unless the firm demonstrates to the Authority the residence is used on a full-time basis during business hours for conducting the firm's business.

A small business is defined, for SLBE purposes, as a firm that is not dominant in its field, and that meets the U.S. Small Business Administration's (SBA) small business size standards for the goods or services it will be providing in a specific Solicitation. The Authority uses North American Industry Classification System (NAICS) in classifying a firm. The receipts of the business or the number of employees, whichever is applicable to the size standard in question, of all affiliates will be counted in determining the size of the firm. The Authority uses the SBA regulations, 13 CFR Part 121, as guidance in determining whether firms are affiliates of each other. A firm is not considered dominant in its field of operation when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration will be given to all appropriate factors, including volume of business, number of employees, financial resources, and competitive status or position.

2.4.2 SLBE Certification

The DSD is responsible for managing the SLBE certification process. The Airports Authority will review each applicant's qualifications and grant or deny certification based on the DSD's findings. The



Authority also requires SLBE firms to apply for recertification at specified intervals. The Authority may decertify a firm at any time if it determines that the firm no longer meets the Authority's eligibility requirements for certification. For purposes of the SLBE program, a firm may be initially certified for up to five NAICS codes. Additional codes may be added to a firm's profile if eligibility requirements are met.

2.4.3 Promoting SLBE Participation

To encourage and promote participation by SLBEs, the Airports Authority may: (i) establish a sheltered market for certain procurements; (ii) determine appropriate bonding and insurance requirements; and (iii) conduct outreach efforts.

2.4.4 Sheltered Market (100% Set Aside)

The DSD shall review the scope of work, technical specifications and Independent Cost Estimate or other documentation supporting anticipated revenue and proposed business terms of upcoming Solicitations to identify potential SLBE participation, including whether any Solicitation should be placed in the sheltered market. In so doing, the DSD shall examine the types of goods or services involved and, for all Contracts, the approximate dollar distribution by discipline, as well as any recommendations from the requesting office. The following rules shall apply:

- (1) The DSD shall make a recommendation to the Contracting Officer as to whether the proposed procurement should be placed in the sheltered market. In the event the Contracting Officer and the DSD are unable to agree, the Vice President, OSCM shall make the final decision.
- (2) No procurement shall be placed in the sheltered market unless there are at least three (3) certified SLBE firms that are technically and financially capable of performing the Contract's requirements and have not had past performance concerns.
- (3) The decision to place a procurement in the sheltered market shall be made by the Authority in its sole discretion.

2.5 SUPPLIER DIVERSITY PROGRAM ADMINISTRATION

2.5.1 DBE Goals & SLBE Requirements

Airports Authority Solicitations will state whether there is a DBE participation goal or an SLBE participation requirement, and if so, what it is. The following applies to all Offers submitted in response to an Authority Solicitation that includes a DBE goal or SLBE requirement:

- (1) In order to conform to an Authority Solicitation in which there is a DBE goal or SLBE requirement, the Offeror must either submit a plan to achieve the DBE goal or SLBE requirement with its Offer on a form provided by the Authority or submit with its Offer a Request for Waiver of the goal or requirement. Offers that do not conform to these requirements may be rejected.
- (2) All other matters relating to the DBE or SLBE participation proposed by an Offeror will be treated as matters relating to the Offeror's responsibility, which may be dealt with by the Authority through communications with the Offeror prior to Contract award. Unless the



Authority declares otherwise, such communications with Offerors do not constitute “negotiations” or “discussions” as these terms are used herein and do not require communication with other Offerors.

- (3) Specific details regarding DBE/SLBE participation, including information that must be submitted with an Offer and other DBE/SLBE participation conditions will be set forth in the Solicitation.
- (4) Firms must be certified as DBE or SLBE no later than the Solicitation due date.

2.5.2 Outreach and Advertising

The Airports Authority partners with minority and small business organizations to educate DBEs and SLBEs on doing business with the Authority and to advertise procurement opportunities.

The DSD may assist Offerors by identifying certified DBE and SLBE firms. The Authority’s directories of DBE and SLBE firms are available on its website. The Authority does not warrant or guarantee the performance capability of firms listed in any directory.

2.5.3 Waivers

If an Offeror is unable to meet all or any part of a DBE goal or SLBE requirement, it must submit a request for a waiver of the goal or requirement with its Offer. The request must be accompanied by documentation that clearly shows the Offeror has made a good faith effort to meet the DBE participation goal or SLBE requirement.

Efforts that are merely pro-forma are not good faith efforts. Efforts to obtain DBE or SLBE participation are considered pro-forma, even if they are sincerely motivated, if given all relevant circumstances, they could not reasonably be expected to produce a level of participation sufficient to meet the DBE goal or SLBE requirement and other measures were reasonably available. For example, advertising or bulk mailings, alone or together, are considered pro forma and not good faith efforts unless followed up with telephone calls and/or correspondence consistent with normal business practice. If the DBE or SLBE expresses an interest in the opportunity or makes an Offer, the Offeror must demonstrate it made a reasonable effort to pursue the expression of interest or to negotiate with the DBE or SLBE.

2.5.4 Substitutions

Upon a finding by the Airports Authority that the Offeror acted in good faith in attempting to meet the DBE goal or SLBE requirement, the Offeror may be permitted to: (i) to substitute DBE or SLBE subcontractors for one or more subcontractors named in its Offer; (ii) obtain one or more DBE or SLBE subcontractors to perform the work originally designated for a DBE or SLBE joint venture partner; or (iii) achieve the DBE goal or SLBE requirement through alternative means that are satisfactory to the Authority. The circumstances in which this may be allowed include, but are not limited to, a DBE’s or SLBE’s:

- (1) Cessation of business for causes beyond the control of the Offeror;
- (2) Bankruptcy or insolvency;
- (3) Inability to furnish any required performance or payment bonds;



- (4) Inability to obtain, or loss of, a license necessary to the performance of work by the DBE or SLBE;
- (5) Failure or refusal to execute a subcontract with the Offeror, but only where the Contracting Officer can determine with reasonable certainty the terms of the subcontract and the DBE's or SLBE's failure to execute the subcontract has not been caused by changes the Offeror has made to the subcontract;
- (6) Failure to comply with the terms and conditions of its subcontract with the Offeror;
- (7) Voluntary decision of the subcontractor not to participate on the project; or
- (8) Inability to perform a commercially useful function, or to perform work of the nature and scope claimed for it.

2.6 POST-AWARD COMPLIANCE WITH DBE GOALS & SLBE REQUIREMENTS

The Airports Authority will conduct post-award compliance reviews to ensure the DBEs or SLBEs proposed are, in fact, performing and being paid for the work in accordance with the Contract. The specific manner in which the Contractor must demonstrate its compliance with the DBE and SLBE participation provisions will be set forth in the Contract.

The Contractor may be found to be non-compliant with the DBE goal or SLBE requirement included in its Contract in event of the following:

- (1) The terms and or scope of a subcontract with a DBE or SLBE do not agree with the documents provided to the Authority prior to award.
- (2) A firm other than the DBE or SLBE listed in the documents provided to the Authority prior to award is performing the subcontract work unless a substitution was granted by the Authority.
- (3) The Contractor fails to submit the required post-award documentation of DBE or SLBE participation.
- (4) The DBE or SLBE enters into agreements with other firms to perform the work without the Authority's approval.
- (5) The DBE or SLBE is not performing a commercially useful function.
- (6) The DBE or SLBE is no longer eligible to be certified as a DBE or SLBE, except that growth in the DBE or SLBE's business that causes it to exceed the applicable size standard during the term of its Contract will not be a basis for finding the Contractor in non-compliance.

2.7 VOLUNTARY MINORITY-OWNED BUSINESS ENTERPRISE (MBE) AND WOMEN-OWNED BUSINESS ENTERPRISE (WBE) PARTICIPATION

The Airports Authority encourages the participation of MBEs and WBEs in Authority Contracts, even if they do not qualify for certification under the DBE or SLBE program or do not wish to go through the certification process. The Authority may establish voluntary MBE/WBE goals for its Contracts in



addition to the SLBE participation requirements and may conduct outreach to encourage MBE/WBE participation. Achievement of MBE/WBE goals by Contractors is strictly voluntary.



CHAPTER 3: METHODS OF PROCUREMENT

3.1 POLICY

The Airports Authority is committed to obtain, to the maximum extent practicable, full and open competition for its Contracting opportunities. Contracting Officers shall determine which procurement method is most advantageous to the Authority. In making this determination, consideration shall be given to the procurement method that maximizes competition, pricing, and efficiency.

NOTE: For Solicitations funded by the FTA, see Sections 10.4.6 and 10.7.2 of this Manual for additional guidance on special requirements and restrictions.

3.2 MICRO-PURCHASE

The Airports Authority may utilize the micro-purchase method for purchases at or under the then-current threshold established by the FAR (in Subpart 2.1 – Definitions) without soliciting competitive quotations.

The Authority's Purchasing Card (P-card) Policy and Procedures set forth guidance for the appropriate processing of micro-purchase transactions.

NOTE: For Solicitations funded by the FTA, see Section 10.4.6.1 of this Manual for additional guidance on special requirements and restrictions.

3.3 SIMPLIFIED ACQUISITION / REQUEST FOR QUOTATION (RFQ)

A Contracting Officer may use Simplified Acquisition Procedures for procurements that exceed the micro-purchase threshold with an estimated value of up to \$250,000. These procedures are intended to promote economy, efficiency, and innovation in Contracting; reduce administrative costs to the Airports Authority; and avoid unnecessary burdens or complexities that could reduce competition. Contracting Officers shall not split a procurement greater than the simplified acquisition threshold into several transactions in order to circumvent this Manual.

NOTE: For Solicitations funded by the FTA, see Section 10.4.6.2 of this Manual for additional guidance on special requirements and restrictions.

3.3.1 Procurements Valued Above the Micro-Purchase Threshold up to \$50,000

For procurements that exceed the micro-purchase threshold, but which are not estimated to exceed \$50,000, the Contracting Officer shall request written quotations from at least three (3) Offerors that routinely provide the goods or services in their normal course of business.

3.3.2 Procurements Valued at \$50,000 up to \$250,000

For procurements that are estimated to be \$50,000 or greater, but which are not estimated to exceed \$250,000, the Contracting Officer shall request written quotations from at least three (3) Offerors that routinely provide the goods or services in their normal course of business and shall advertise the RFQ, in accordance with Section 4.1.5.



3.3.3 RFQ

The RFQ shall: (i) clearly specify the goods or services desired; (ii) request such information as the Contracting Officer deems advisable to evaluate the quality of the Offerors' capabilities (such as resumes or references for purchases involving services or product data sheets for commodities); (iii) specify the due date for quotations; (iv) request a description of the manner in which the Offeror will provide the services, if appropriate; and (v) specify whether the Offeror will be selected based on price only or price and price-related factors.

All requests shall be made on or about the same date and shall request a quote by one due date, but the Contracting Officer may authorize or accept submissions after such due date for good cause and provided it does not provide an unfair advantage to any of the Offerors.

3.3.4 Evaluation of Quotations

The Contracting Officer shall evaluate the quotations in accordance with the terms set forth in the RFQ. If only one quotation is received, the Contracting Officer shall attempt to obtain at least one (1) additional quotation (i.e. at least two (2) in total) by contacting the vendors that declined to submit and extending the response date, by requesting a quotation from an additional vendor, or both.

3.3.5 Basis for Award

Before making award, the Contracting Officer shall determine the quoted price is fair and reasonable and include a statement in the Contract file regarding price reasonableness and the basis for the determination. The Contracting Officer may base the determination on comparison of the proposed price with prices found to be reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, market research, competitively obtained pricing, or any other reasonable basis.

In a situation in which an item can only be obtained with a minimum order price or quantity that unreasonably exceeds the requested quantity, which then results in unreasonable pricing for the quantity required, the Contracting Officer shall inform the requesting office of all facts and requirements regarding the quote and ask the requesting office to confirm or alter its requirement. The file shall be documented to support the final action taken.

3.4 SEALED BID

The use of competitive sealed Bids is appropriate when:

- (1) There is no anticipated need to enter negotiations;
- (2) Price and price-related factors are the only relevant evaluation criteria;
- (3) Products or performance are expected to be relatively uniform;
- (4) There are multiple qualified sources;
- (5) Lead times are adequate for the requirement; and
- (6) Clear, detailed specifications or requirements are available.



3.4.1 Preparation of Invitation for Bid (IFB)

An IFB is prepared using a uniform Contract format that includes the Solicitation and Contract form, provisions, and clauses appropriate for the type of procurement. The IFB shall contain a description of the goods or services required; quantities, if applicable; time, date, and address for receipt of Bids; and whether alternative Bids will be accepted. The specifications must not be designed to favor any specific Bidder.

An IFB shall be advertised for at least 30 Days unless the Contracting Officer determines otherwise.

3.4.2 Bid Opening

The Contracting Officer will publicly open all Bids received at the time specified in the Solicitation. The following information will be read aloud: (i) Bidder's name; (ii) total price or lot price, as applicable; and (iii) brand name and model number, if applicable. The Contracting Officer shall prepare an Abstract of Offers that includes verification of Bid bond receipt and acknowledgment of receipt of amendments, as applicable. Subsequent to the public Bid opening, the Contracting Officer will review all documentation to determine the responsiveness and responsibility of the apparent successful Bidder.

3.4.3 Two-Step IFB

A two-step IFB procurement method may be used to ensure that Bidders meet certain minimum requirements. In step one, technical proposals are evaluated based on the evaluation criteria that are included in the Solicitation documents. In step two, all Bidders who submitted acceptable technical proposals will be invited to submit pricing.

3.4.4 Review of Bids for Responsiveness

The Contracting Officer shall reject any Bid:

- (1) That fails to materially conform to the essential requirements of the IFB;
- (2) For which the Contracting Officer makes a determination, and documents in writing, that the price is unreasonable. This includes not only the total price of the Bid, but also the prices for individual line items;
- (3) That is received from a Bidder that is suspended, debarred, proposed for Debarment, or declared ineligible as of the Bid opening date;
- (4) That fails to furnish a guarantee in accordance with the IFB requirements; or
- (5) That is not signed by the Bidder.

The Contracting Officer may reject any Bid that:

- (1) Requires the Authority to determine whether the Bidder's Offer meets applicable specifications;
- (2) Substitutes or adds the Bidder's own contractual terms, imposes conditions that limit the Bidder's liability to the Airports Authority, or limits the Authority's rights under any Contract clause; or
- (3) Provides alternative Bids when such were not requested.



3.4.5 Resolving Tie Bids

If two or more Bidders are equally eligible for award, award shall be made to the Bidder who submitted the Bid first. If the time of Bid cannot be established or if the Contracting Officer determines it to be in the Airports Authority's best interests, award may be made by a drawing by lot limited to those Bidders. The drawing shall be witnessed by at least three persons, and the Contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

3.4.6 Minor Informalities or Irregularities in Bids

A minor informality or irregularity is one that is a matter of form and not of substance or that pertains to some immaterial or inconsequential defect or variation of a Bid from the exact requirement of the Solicitation. The Contracting Officer may give the Bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a Bid, or waive the deficiency, provided the waiver will not violate the principles of the competitive procurement.

3.4.7 Mistakes in Bids Before Award

The Contracting Officer shall examine each Bid for mistakes. In cases where the Contracting Officer has reason to believe that a Bid mistake may have been made, the Contracting Officer shall request from the Bidder verification of the Bid, calling attention to the suspected mistake.

Correction of a Bid is limited to a Bid that is responsive and shall not be used to permit corrections to make the Bid responsive or competitive.

If a Bidder alleges a mistake after opening Bids and before award, the Contracting Officer may permit correction of the Bid if clear and convincing evidence establishes both the existence of the mistake and the Bid actually intended. In such cases, the Contracting Officer may allow a Bidder to withdraw or correct the Bid. However, correction of the Bid will not be permitted if the correction results in displacing one or more Bids.

When a Bid is corrected or withdrawn, or correction or withdrawal is denied, the Contracting Officer shall prepare a written determination that explains why the action was taken. Mistakes that are discovered or reported after Contract award are addressed in Section 5.5.

3.4.8 Basis of Award

To be considered for award, a Bid must comply in all material respects with the IFB, and the Bidder must be found responsible, as detailed in Section 4.5.

The Airports Authority will award the Contract to the responsive, responsible Bidder providing the lowest (or, in the case of concessions, the highest) price. If the Bid from the lowest responsive and responsible Bidder exceeds available funds, the Authority may negotiate with the apparent low Bidder to obtain a Contract price within the available budget.

3.5 COMPETITIVE PROPOSAL

The use of a Request for Proposal (RFP) is appropriate when criteria in addition to price and price-related factors are important in selecting the Offeror, such as when there are potentially significant qualitative differences between Offerors' products or services; or there is a potential need to enter



into negotiations after receipt of Offers. Under this method, technical evaluation is required, and Best and Final Offers (BAFOs) may be requested to address issues related to project scope, the manner in which the work will be performed, budget, or other limitations.

An RFP shall be advertised for at least 30 Days unless the Contracting Officer determines otherwise.

3.5.1 RFP Content

As applicable, RFPs should specify:

- (1) A description of the goods, services, or scope of requested work;
- (2) The Contract delivery or performance schedule;
- (3) The evaluation criteria;
- (4) A description of any special qualification requirements the Offeror must satisfy;
- (5) Instructions for submitting proposals, including a deadline for proposal submission;
- (6) The information to be provided in the proposal;
- (7) The period during which proposals must remain open for acceptance; and
- (8) The anticipated Contract terms and conditions and the extent to which they are negotiable.

3.5.2 RFP Method

Contracting Officers are responsible for ensuring that the RFP method prioritizes efficiency and economics for both Airports Authority staff and participating businesses.

3.5.2.1 Lowest Price Technically Acceptable (LPTA) / Highest Price Technically Acceptable (HPTA)

The LPTA method is appropriate when selection of the technically acceptable proposal with the lowest offered price is preferred. The HPTA method is appropriate when selection of the technically acceptable proposal with the highest offered price is preferred (e.g., concessions Contracts). The evaluation factors that establish the requirements of acceptability shall be set forth in the Solicitation, and Solicitations shall specify that award will be made on the basis of the lowest (or highest) price proposals meeting or exceeding the acceptability standards. Proposals are evaluated for acceptability only, and trade-off is not permitted.

3.5.2.2 Best Value with Trade-Off

The best value with trade-off procurement method takes into consideration technical factors and price, which are separately evaluated. Once the technical evaluation is complete, the Contracting Officer will consider both the technical evaluation and the price proposed by each Offeror and determine which Offer provides the best value to the Airports Authority.

Such a comparison involves a trade-off between price and non-price factors. The relative importance of price and non-price factors varies based on the specific goods and services that are being procured. If proposals are found to be technically equivalent, then price becomes the determining factor.



If it is determined that the additional technical merit offered is worth the additional cost in relation to other proposals received, the Authority may select other than the lowest priced Offer. Similarly, with respect to revenue Contracts, if it is determined that the additional technical merit offered is worth the decrease in revenue in relation to other proposals received, the Authority may select other than the highest priced Offer. The rationale for the selection and for technical-price tradeoffs shall be documented in the Contract file.

3.5.2.3 Technical Only

If approved by the Vice President OCSM, proposals for (i) legal, financial, audit, or professional services; or (ii) proposals for other unusual or technically demanding projects may be evaluated based solely upon technical criteria, without consideration of price. The Solicitation document will clearly advise potential Offerors when establishment of the competitive range or Offer selection will be made on technical merits exclusive of price.

Even though an Offeror may be selected based solely upon technical criteria, the Airports Authority retains the ability to negotiate price with that Offeror. The Authority also retains the ability to negotiate a Contract with the next highest technically rated Offeror in the event that price negotiations are unsuccessful with the highest technically rated Offeror. The final agreed-to price must be fair and reasonable.

3.5.3 RFP Evaluation Criteria

The Solicitation shall clearly state the evaluation criteria, as selection will be made only in accordance with the stated evaluation criteria. Each separate criterion shall fully describe the necessary and relevant elements which will be evaluated. Evaluation criteria must not be designed to favor any specific Offeror. The use of sub-criteria must be approved by the Contracting Officer.

3.5.4 Proposal Opening

Public openings of proposals are not required and are not appropriate.

3.5.5 Clarifications

Clarifications may be requested from an Offeror for the purpose of clarifying minor ambiguities and eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. Clarifications may also be requested during the technical evaluation process. Clarification is achieved by explanation or substantiation, either in response (written or oral) to the Contracting Officer's inquiry or as initiated by the Offeror. Uncertainties as to the pricing or technical aspects of proposals, unless significant, may be resolved through clarification. Unlike discussion (see Section 4.3.1), clarification does not give the Offeror an opportunity to revise or modify its proposal. Clarifications need not be requested from all Offerors.

3.5.6 Review of Proposals for Responsiveness

Prior to commencing technical evaluation, the Contracting Officer shall review whether Offers:

- (1) Were submitted by the deadline date and time.
- (2) Acknowledged receipt of all amendments.
- (3) Included completed Price Schedule, if applicable.



- (4) Included completed Representations and Certifications.
- (5) Included all material information required by the Solicitation, including signed exhibits or waiver for the DBE goal or SLBE requirement, technical, qualifications, or experience submittals.

The Contracting Officer will notify any Offeror whose proposal was not responsive to the Solicitation of its elimination from the competition within five (5) business Days of his or her determination.

3.5.7 Proposal Evaluation

3.5.7.1 Establishing an Evaluation Committee (EC)

The Contracting Officer shall establish an EC that is tailored in size and composition to each individual procurement action.

The requesting Vice President or designee is responsible for recommending to the Contracting Officer members for inclusion on the EC, including the EC Chair. With respect to the composition of the voting members of the EC, the Contracting Officer shall:

- (1) Include a minimum of three members with a broad base of collective experience;
- (2) Not include members who work for the same first level supervisor except for Vice Presidents who report directly to the CEO;
- (3) Not include members who are supervisor and subordinate unless approved in writing by the Vice President, OSCM;
- (4) Include members who are unbiased and capable of objectively assessing the merits of the various proposals;
- (5) Include at least one member from outside the Airports Authority office that will use the goods or services that are the subject of the procurement;
- (6) Consider whether other voting members, such as the Vice President and Board Secretary, Vice President for Engineering, or the Vice President for Diversity, Inclusion, and Social Impact, should be included to provide subject matter or policy expertise; and
- (7) Include Contractors or other professionals, only if approved by the Vice President, OSCM.

For those procurements: (i) for which Board approval is required; and (ii) which include an SLBE participation requirement or DBE or ACDBE participation goal, the EC Chair shall include an employee representing the Office of Diversity, Inclusion, and Social Impact or the Department of Supplier Diversity as a member of the EC.

In addition to voting members, the EC may include personnel requested by the EC Chair to participate in a non-voting, advisory capacity.

All members of the EC shall consider potential conflicts of interest. Prior to the start of the evaluation, EC members are required to sign a written statement concerning personal and, with respect to non-Authority employees, firm conflicts of interest.



3.5.7.2 Source Selection Plan

The Contracting Officer shall prepare and provide to the EC Chair a plan that: (i) identifies all EC members and the EC Chair; (ii) describes the technical evaluation process; (iii) sets forth the evaluation criteria; and (iv) provides any required confidentiality, non-disclosure or other required forms. The Contracting Officer shall provide the EC Chair copies of the technical proposals for distribution to EC members along with the Source Selection Plan.

3.5.7.3 Technical Evaluation Process

EC members shall evaluate each proposal against the evaluation criteria. The EC Chair and the Contracting Officer shall assure that evaluation approaches used are consistent for all proposals. EC members' judgment must be based on facts as presented in the proposal, performance evaluations on file with the Airports Authority or otherwise obtained as part of the procurement process, as well as first-hand knowledge from the panel members from execution of prior Contracts.

An Offeror shall not be penalized due to lack of experience with the Authority itself, but may be judged, among other considerations, on the relevancy of its experience and expertise wherever it occurred. Likewise, an Offeror shall not be given an unfair advantage or disadvantage simply because of a previous contractual relationship with the Authority. However, the relevancy of such experience and its quality in terms of the RFP's scope of work may be judged.

The following evaluation steps generally apply to the technical evaluation of proposals:

- (1) Prior to the start of evaluation, the Contracting Officer shall ensure that the EC members have a common understanding of how the proposals are to be evaluated. Only the evaluation criteria included in the Solicitation shall be used for the evaluation. Also, the relative order of importance of the evaluation criteria cannot be changed from that in the Solicitation.
- (2) Working independently, the EC members shall evaluate the proposals, make notes concerning the strengths and weaknesses of each proposal, and rate each proposal in an impartial and objective manner relative to each evaluation criterion. EC members should carefully document any areas of noncompliance with the specific requirements stated in the RFP.
- (3) After each EC member has completed evaluation of all proposals, the EC will hold an organized discussion of the strengths and weaknesses of each proposal in terms of the evaluation criteria. In the event of vague, conflicting, or missing language in a proposal, an evaluator may request the Contracting Officer to seek clarification from the Offeror (see Section 3.5.5).
- (4) The EC Chair, Contracting Officer, or other individuals as designated by the EC Chair shall check references and report the results to all EC members.
- (5) On-site inspections of Offerors' facilities or equipment being offered are permissible for the purpose of verifying information presented in proposals.
- (6) Those proposals determined to be in material noncompliance with the requirements of the RFP may be eliminated from further consideration.



- (7) If, after consulting with the EC Chair, the Contracting Officer determines that it is in the best interests of the Authority, the Contracting Officer may establish a competitive range of Offerors.
- (8) The EC may conduct oral interviews with Offerors within the competitive range, for the purpose of collecting additional information, enhancing understanding of proposals, and obtaining minor clarification of proposals. EC members may adjust their evaluation to reflect information obtained at the oral interview, provided the information is appropriately considered under the evaluation criteria stated in the RFP. If held, such interviews are not considered to be “discussions” or “negotiations” and do not necessarily require a call for BAFOs.
- (9) Discussions, as explained in Section 4.3.1, may be held with Offerors within the competitive range, in addition to, or in lieu of, oral interviews.
- (10) After the EC concludes its technical deliberations, including the clarification process, and considering the results of the reference checks, the EC members shall finalize their evaluation, revising if necessary, and sign and date their individual evaluations. A summary evaluation report must be prepared, signed, and dated by the EC. The summary report should include at a minimum: (a) names of the EC members, (b) names of all Offerors, (c) evaluation criteria, and (d) evaluations of each Offeror. The signed and dated summary report and the signed and dated individual evaluations shall be given to the Contracting Officer for inclusion in the Contract file.
- (11) Unless specifically authorized by the Vice President, OSCM, the Contracting Officer shall withhold the price information from the EC until the technical evaluations are completed.
- (12) Proposals provided to the EC members in hard copy format should be returned to the Contracting Officer.

3.5.7.4 Price Evaluation

The Contracting Officer is responsible for evaluating the proposed price and may appoint a separate evaluation panel or advisor to assist in evaluating the price and determining its reasonableness.

3.5.7.5 Competitive Range

The Contracting Officer shall determine, based on the results of the initial evaluation, which proposals are in the competitive range for the purpose of conducting written or oral discussions (negotiations). Unless the Solicitation indicates otherwise, the competitive range shall be determined on the basis of both price and technical criteria. Pre-set thresholds will not be used for determination of the competitive range.

3.5.7.6 Exchanges

Exchanges with Offerors after receipt of proposals are allowed. These may take the form of clarifications, communications, or discussions, including requests for BAFOs as further described in Chapter 4. Exchanges shall take place only with the Contracting Officer.

3.5.8 Mistakes in Proposals Before Award

If an Offeror requests permission to correct a mistake in its proposal, the Contracting Officer shall request evidence from the Offeror to show both the existence of the mistake and the proposal



actually intended. The Offeror must submit its original worksheets and other data used in preparing the proposal, subcontractors' and suppliers' quotations, and other evidence that could serve to establish the mistake, the manner in which the mistake occurred, and the proposal actually intended. The Contracting Officer will evaluate the evidence submitted, and if it is found to be clear and convincing, and with approval of the Vice President, OSCM, the correction may be permitted. If a correction is permitted, the Offer will then be evaluated or reevaluated after the correction is made. If the request for correction is rejected, the Offeror will be informed that it may withdraw its proposal from consideration. Mistakes that are discovered or reported after Contract award are addressed in Section 5.5.

3.5.9 Basis of Award

3.5.9.1 Best Value Determination

When utilizing a best value with trade-off procurement method, the Contracting Officer may obtain input from the EC Chair or the EC on a best value determination, including whether the EC Chair or the EC believe a given price differential outweighs the difference in technical merit.

In certain large dollar value or otherwise mission critical procurements, the Contracting Officer may appoint one or more senior officials within the Airports Authority to serve as the Source Selection Team. Such a determination shall be made only if approved by the Vice President, OSCM. If such a determination is made, then the Source Selection Team so appointed shall make the best value determination in conjunction with the Contracting Officer.

3.5.9.2 Determination of Award

Award of a Contract shall be made to the responsible Offeror (See Section 4.5) whose proposal is determined to be the most advantageous for and in the best interests of the Airports Authority.

3.5.9.3 Documentation

The Contracting Officer shall ensure that an overview of the procurement process for a specific award is documented, including key milestones, a brief explanation and the resolution of exception occurrences, results of negotiation, and a summary of the selection.

3.6 CONTRACTS PROCURED BY OR WITH OTHER GOVERNMENTAL ENTITIES

When utilizing any of the following procurement methods, the Contracting Officer shall make a written determination that such procurement is in the best interests of the Airports Authority and that the goods or services cannot otherwise be obtained as conveniently or economically.

3.6.1 Contracts Competitively Procured by Other Governmental Entities

The Airports Authority may obtain goods and services utilizing a Contract previously awarded by a governmental entity using competitive procedures. Such governmental entities include the Metropolitan Washington Council of Governments, the General Services Administration, and other federal, state, regional, county, or local government agencies.



3.6.2 Direct Acquisition from a Federal, State, Regional, County or Local Governmental Entity

The Airports Authority may acquire directly from a federal, state, regional, county, or local governmental entity if necessary to comply with applicable governmental requirements, or if it is shown that procurement of the requirement in this manner is clearly less costly than if the acquisition were competed by the Authority alone.

3.6.3 Joint Procurements

The Airports Authority may participate in Solicitations with other agencies or governmental users when other agencies have needs similar to the Authority's and at least one other agency plans to jointly acquire the goods or services to effect a more cost effective or efficient purchase. The Contracting Officer shall ensure that appropriate approvals have been obtained prior to submitting the Authority's requirements to participate in the Solicitation.

NOTE: For Solicitations funded by the FTA, see Section 10.7.4 of this Manual for additional guidance on special requirements and restrictions.

3.7 OTHER THAN FULL AND OPEN COMPETITION

The use of other than full and open competition is permitted only with proper written justification. The procurement of goods or services, including concessions or construction valued at and above \$200,000 using other than full and open competition requires Board approval. In determining the value of a procurement, the Airports Authority will consider the estimated total value of a Contract, including the cost or value of all options.

NOTE: For Solicitations funded by the FTA, see Section 10.7.5 of this Manual for additional guidance on special requirements and restrictions.

3.7.1 Written Justification

Written justification must include, at a minimum: (i) description of the Contracting activity, including estimated value; (ii) demonstration that the proposed Contractor's unique qualifications or the nature of the procurement requires the use of other than full and open competition procedures; (iii) description of the efforts used to ensure that Offers were solicited from as many sources as possible or practicable; (iv) a determination by the Contracting Officer that the cost or value to the Airports Authority is fair and reasonable; (v) any other facts supporting the use of other than full and open competition; (vi) a statement of actions, if any, that the Authority can take to avoid other than full and open competition in subsequent procurements; and (vii) a certification by the Contracting Officer that the justification is complete and accurate to the best of his or her knowledge and belief.

3.7.2 Airport Security

For security reasons, distribution of certain Solicitations must be controlled. This is necessary when it is possible that serious detrimental consequences could result to the public, the airlines, or the Airports Authority if the contents, or in some cases the existence, of the Solicitation and Contract were revealed to unauthorized persons, including individuals who may wish to do harm to the United States. In this situation, the Vice President, OSCM must determine, and document, that the



Solicitation distribution must, for airport security reasons, be issued only to firms approved by the Authority.

NOTE: For Solicitations funded by the FTA, see Section 10.7.3.2 of this Manual for additional guidance on special requirements and restrictions.

3.7.3 Limited Competition

Limited competition is a Contracting method in which the Solicitation is distributed to a limited number of Offerors and may be utilized when the number of eligible Offerors is limited. Limited competition purchases may be processed by using sealed Bid or competitive proposal procurement methods.

3.7.4 Airline Improvements to Airport Facilities

The procurement of construction services by an airline tenant to deliver specifically identified and approved improvements to airport facilities is in the best interests of the Airports Authority.

The Authority may enter into a reimbursement agreement with an airline tenant to deliver such improvements as an alternative to Contracting directly for the improvements when the Authority has determined that the airline tenant will have a substantial interest in the improvements as a part of its leasehold or the improvements will be integral to its operations (e.g., improvements to an airline tenant's passenger processing facilities, baggage handling system or communication facilities for the dissemination of passenger, flight and aircraft information).

Whenever possible, the Authority will require the airline tenant to obtain full and open competition for the construction services. If other than full and open competition is necessary, the Authority will require the airline tenant to show that it has used reasonable measures to obtain fair and reasonable prices for the construction services and may require competition among Offerors acceptable to the Authority, including using a list of pre-qualified Contractors. Such a reimbursement agreement with an airline tenant may be used only when the Vice President, OSCM has determined and documented that it is in the best interests of the Authority to procure the improvements through a reimbursement agreement.

NOTE: For Solicitations funded by the FTA, see Section 10.7.5.2 of this Manual for additional guidance on special requirements and restrictions.

3.7.5 Sole Source

With proper justification, the Airports Authority may procure on a sole source basis when there is only one possible or practicable source.

3.7.5.1 Sole Source Types

Examples where sole source procurements may be applicable include:

- (1) *Unique or Innovative Concepts.* The source of the goods, supplies or services 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.



- (2) *Patents or Restricted Data Rights.* The existence of patents or restrictions arising from intellectual property or other proprietary rights preclude competition and make goods, supplies, or services available from a single source.

NOTE: For Solicitations funded by the FTA, see Section 10.7.5.3 of this Manual for additional guidance on special requirements and restrictions.

3.7.5.2 Sole Source Procedures

In connection with any sole source procurement, the Contracting Officer shall include in the Contracting file a sole source justification.

For sole source procurements in excess of the micro-purchase threshold and below \$200,000, the requestor shall prepare and deliver to the Contracting Officer a sole source justification with the Requisition. If the Contracting Officer determines that sole source procurement is justified, the Contracting Officer shall obtain the approval of the requestor's manager and the Contracting Officer's manager. For sole source acquisitions valued at or in excess of \$200,000, the Contracting Officer shall obtain the approval of the requestor's manager and Vice President, and the Vice President, OSCM.

In addition, for sole source procurements valued at or above \$50,000, notice will be published on the Airports Authority's website, no less than fifteen (15) Days prior to Contract award and will remain posted for a total of thirty (30) Days, along with information describing the goods or services to be acquired, including the justification, stating that the Authority has determined that only one source is practicably available, identifying that sole source, stating the date on which the Contract will be awarded, stating that any responsible source may submit a statement of capabilities to provide the goods or services for consideration by the Authority, and stating that any such statement of capabilities must be submitted no later than the fifteenth (15th) business Day after the date of publication of the above referenced notice on the website. All submissions shall be reviewed by the Authority to determine if competition exists.

3.7.6 Urgent or Critical Situations

An urgent or critical situation is a sudden and unplanned event that has the potential to significantly impact the travelling public or the operations of the Airports Authority in an adverse manner.

If the urgent or critical situation arises during normal business hours, the Contracting Officer, with the approval of the Vice President, OSCM, shall acquire or authorize the goods and services required to address the situation. If the urgent or critical situation arises outside of normal business hours and requires an acquisition valued greater than the micro-purchase threshold, the CEO, Chief Operating Officer (COO), or Chief Revenue Officer (CRO) may acquire or authorize the acquisition of the goods and services required to address the situation.

The manager of the department that required the urgent or critical procurement shall prepare an after-action report of the situation, including a justification for the procurement. If the value of such procurement is in excess of \$200,000, such report shall be submitted to the Board within five (5) business days after the occurrence.



3.7.7 Unsolicited Proposals

The Airports Authority will accept unsolicited proposals. To be considered, an unsolicited proposal must:

- (1) Be innovative and unique;
- (2) Be independently originated and developed by the Offeror;
- (3) Be prepared without Authority supervision, endorsement, direction, or involvement;
- (4) Include sufficient detail to permit a determination that the proposed goods or services could benefit the Authority; and
- (5) Not be an advance proposal for a known Authority requirement that can be procured by competitive methods.

Unsolicited proposals should be forwarded to the OSCM for review by a Contracting Officer. The Contracting Officer shall determine whether the proposal meets the above requirements and, if so, shall coordinate evaluation of the proposal with appropriate Authority staff.

3.7.7.1 Procedures for Contract Award

A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a Contract without providing for full and open competition. The Contracting Officer must take the following actions before entering into a Contract resulting from an unsolicited proposal:

- (1) Advertise the receipt of the unsolicited proposal with an adequate description of the scope without disclosing proprietary information or disclosing the originality of thoughts or innovativeness of the proposal;
- (2) Advertise the Authority's interest in acquiring the goods or services described in the unsolicited proposal;
- (3) Provide adequate opportunity for interested parties to comment or submit competing proposals; and
- (4) Advertise the Authority's intent to award a Contract based on the unsolicited proposal or other proposals submitted in response to advertisement.

If it is impossible to describe the goods or services offered without disclosing proprietary information, originality of thought or innovativeness, the Contracting Officer may make a sole source award to the Offeror, consistent with the requirements of Section 3.7.5.

3.7.8 Pilot Programs

A pilot program is a short-term (typically no longer than one year, although exceptions may be granted with proper justification) experiment that helps the Airports Authority learn how a large-scale project might work in practice. Use of a pilot program may be appropriate in order to determine whether it is in the Authority's interest to subsequently undertake a procurement. Pilot program terms must comply with guidance issued by the OSCM and be approved by the Vice President, OSCM prior to implementation.



CHAPTER 4: GENERALLY APPLICABLE PROCEDURES

4.1 PRE-OFFER PROCEDURES

4.1.1 Contact with Prospective Offerors

Contact with prospective Offerors by the requesting office or the OSCM is allowed as part of procurement planning in the course of market research to learn industry capabilities. The Airports Authority shall not make commitments or representations that would lead a prospective Offeror to believe that it will receive an order or Contract for the planned procurement. Once a Solicitation is issued, all communication with prospective Offerors shall be directed to a Contracting Officer.

4.1.2 Market Research

Market research is conducted by the requesting office or OSCM to determine if commercial or other goods or services are available to meet the Airports Authority's needs or could be modified to meet the Authority's needs. A description of the Authority's needs stated in sufficient terms is required prior to the conduct of market research. Market research can initiate industry involvement, develop and refine the procurement strategy, determine whether commercial goods or services exist, determine the level of competition, identify market practices, inform budgetary estimates, or obtain comments on requirements. The magnitude and degree of formality of the market research should be appropriate for the contemplated procurement. No discussions undertaken in connection with market research shall be deemed a commitment or an Offer to engage in any business relationship, Contract, or future dealing between the Authority and the entity.

4.1.3 Request for Information (RFI) or Draft Solicitation

The Airports Authority may issue an RFI or draft Solicitation in order to obtain industry comments or information for planning purposes.

The RFI or draft Solicitation shall clearly state that the Authority does not intend to award a Contract on the basis of the request and that the Authority will not pay for information obtained as a result of the RFI or draft Solicitation.

4.1.4 Specifications and Statements of Work

Requesting offices are responsible for defining and preparing specifications and statements of work. Specifications and statements of work shall state the Airports Authority's needs in a manner designed to achieve meaningful competition.

Specifications and statements of work should be defined in terms that enable and encourage the Offer of commercial items to the extent that such items are available to meet the Authority's needs, as applicable.

The Authority may describe a specification or statement of work by use of a brand name, provided the description is followed by the words "or equal." This description shall be used only when adequate specifications or a more detailed statement of work cannot be employed. When using



a brand name or equal purchase description, the description shall also list the salient characteristics and minimum acceptable features.

Specifications and statements of work that limit competition must be justified in writing and approved by the Contracting Officer.

4.1.5 Advertising Contracting Opportunities

Solicitations with an estimated value of \$50,000 and above are advertised on the Airports Authority's website or its managed portal accessible via the website.

NOTE: For Solicitations funded by the FTA, see Section 10.7.6 of this Manual for additional guidance on special requirements and restrictions.

4.1.6 Security Considerations

Standard competitive procurement procedures may be adapted to ensure the required security for a Solicitation. Dependent upon the situation, there may be no notice or announcement of the Solicitation or the award.

4.1.7 Stipends

The Airports Authority shall have the discretion to give a monetary stipend to those Offerors who submit Offers which are not awarded the Contract when such stipend will benefit competition, create an incentive for obtaining better Offers, or otherwise be in the Authority's best interests. The conditions associated with an Offeror receiving a stipend shall be stated in the Solicitation.

4.1.8 Planholders List

Parties interested in an advertised Solicitation may register to be included in a list to receive Solicitation information and updates (Planholders List). The Planholders List is provided for informational purposes only with the understanding that the Airports Authority does not endorse any of the firms listed.

4.1.9 Pre-Bid/Pre-Proposal Conference/Site Visit

At the Airports Authority's discretion, a pre-Bid/pre-proposal conference and/or site visit may be held to emphasize and clarify critical aspects of the Solicitation, eliminate ambiguities or misunderstandings, and allow the potential Offerors to become familiar with the work and site, as appropriate.

Participation in a pre-Bid/pre-proposal conference and/or site visit is generally not mandatory. Mandatory site visits shall be limited to special situations which require approval of the requestor's Vice President and the Vice President, OSCM.

4.1.10 Amendments

Between the time a Solicitation is issued and when Offers are due, the Airports Authority may amend a Solicitation. Amendments may change the specifications, quantities, delivery schedule, or other requirements or correct or clarify ambiguities, errors, or omissions from the Solicitation. Any date changes will also be included in an amendment.



Contracting Officers are responsible for posting amendments to the website and distributing to all parties on the Planholders List. If an amendment is necessary after proposals have been received, the Contracting Officer will ensure that the appropriate parties receive the amendment.

Failure to acknowledge receipt of an amendment may result in an Offer being found non-responsive. The Contracting Officer must be able to conclude that the Offeror has bound itself to the terms of the amendment. Failure to acknowledge an amendment that involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality or delivery of the offered item will not cause an Offer to be non-responsive.

4.2 OFFER SUBMISSION

4.2.1 Timely Submission of Offers

The Solicitation shall prescribe the manner in which Offerors are to prepare and submit their Bids or proposals. Offerors are responsible for timely submission. If a Bid, proposal, or response to a BAFO, is received after the time set for receipt, it is considered late and may not be considered by the Contracting Officer, unless it arrives before the award is made and one of the following conditions exist:

- (1) It is determined that the late receipt was due solely to action or inaction by the Airports Authority;
- (2) It was received on the day Offers were due after the appointed time, but Offers were not yet opened and the Vice President, OSCM determines that no impropriety occurred and that acceptance of the Offer could not reasonably be prejudicial to the process; or
- (3) Other circumstances exist to warrant a decision by the Vice President, OSCM to evaluate the Offer for possible Contract award.

The OSCM shall be responsible for determining the date and time of receipt.

4.2.2 Revisions/Withdrawals

Offerors may submit a written revision to a Offer or BAFO prior to the submission deadline. If the revision is received after the deadline, it may be accepted only in accordance with the rules governing timely submission. A late revision of the successful Offer may be accepted if it makes the terms of the Offer more favorable to the Airports Authority. Offers may be withdrawn at any time prior to award.

4.2.3 Right to Cancel a Solicitation

A Contracting Officer may cancel a Solicitation or otherwise reject all Offers at any time prior to award. This should only occur when such action is clearly in the Airports Authority's best interests.

Some of the circumstances that may justify the rejection of all Offers are: (i) inadequate or ambiguous specifications were used; (ii) specifications need to be significantly revised; (iii) the goods or services being procured are no longer required; (iv) Offers received indicate that the needs of the Airports Authority can be satisfied by an Offering differing from that on which the Offers were invited; (v) all otherwise acceptable Offers received are at unreasonable prices; (vi) the Offers were not independently arrived at in open competition, were collusive, or were



submitted in bad faith; or (7) budget/funding considerations dictate that the Solicitation should be canceled. The reason for the determination to cancel the Solicitation shall be documented and made a part of the file.

4.2.4 Alternate Offer

An alternate Offer is submitted in variance from the specifications and must be clearly distinguished as an alternate by the Offeror. If in the best interests of the Airports Authority and with the approval of the Vice President, OSCM, a Contracting Officer may accept the proposed alternate or reject all Offers and re-solicit based upon revised specifications. Offerors are permitted to submit more than one Offer as long as they clearly mark the primary Offer that is to be evaluated and identify the alternate Offers.

4.2.5 Single Response to a Solicitation

Even though multiple sources exist and are solicited by full and open competition methods, there are occasions when only one response is received for a Solicitation. Such procurements shall be considered to have been fully and openly competed even though only a single response was received. However, prior to Contract award, the Contracting Officer will inquire to determine why other Offerors did not respond and determine whether to award or to reject the Offer and re-solicit. The Contracting Officer may negotiate the terms of the Contract with the single Offeror. Prior to award, the Contracting Officer shall document that the price is fair and reasonable.

NOTE: For Solicitations funded by the FTA, see Section 10.7.7 of this Manual for additional guidance on special requirements and restrictions.

4.3 OFFER EVALUATION

Each Offer will be evaluated against the evaluation criteria stated in the Solicitation.

4.3.1 Discussions

Any communication between the Contracting Officer and an Offeror, other than communications conducted for the purpose of clarification or correction of mistakes, is considered a discussion.

Written or oral discussions may be held with Offerors to enable the Airports Authority to gain a better understanding of their proposals, to resolve significant uncertainties in proposals, and to give Offerors an opportunity to revise their proposals. The Contracting Officer determines the scope and extent of discussions and will take care to assure that information contained in one Offeror's proposal is not divulged to a competing Offeror.

Discussions may cover all areas of the proposal, including price. In situations where the Contracting Officer believes that prices are too high, that should be pointed out during discussions prior to requesting BAFOs.

The Contracting Officer may elect to hold discussions with only one Offeror, but only if that Offeror is found to be clearly superior to the other Offerors under consideration. The Contracting Officer must get approval from the Vice President, OSCM before such discussions are held.



An Offeror may be selected and award made with or without discussions depending on the circumstances of the procurement, such as the complexity of the requirement, the extent of competition, and the quality of proposals received.

4.3.2 BAFO

The Contracting Officer shall determine when it is appropriate to request BAFOs. This decision may be based on the substance of discussions that took place or the Contracting Officer's judgment. The request for BAFOs will include (1) notice that discussions are concluded; (2) notice that this is the opportunity to submit a BAFO; (3) a due date and time that allows a reasonable opportunity for submission of written BAFOs; and (4) notice that if any proposal revision is submitted, it must be received by the date and time specified and is subject to the late submissions, modifications, and withdrawals provisions of the Solicitation.

After receipt of BAFOs, the Contracting Officer may re-open discussions only if it is clearly in the Airports Authority's best interests to do so (e.g., information available is inadequate to reasonably justify Offeror selection and award based on the BAFOs received). If discussions are re-opened, the Contracting Officer may issue an additional request for BAFOs, if appropriate.

4.4 RESPONSIVENESS

The Contracting Officer is required to review each Offer to verify that each such Offer is responsive to the Solicitation. The nature of this review varies depending on whether the Solicitation is an IFB (Section 3.4.4) or an RFP (Section 3.5.6). As a general rule, a deviation that goes to the substance of the Offer may not be waived or corrected after submission, but a deviation which is only a minor irregularity or informality may be waived.

A deviation goes to the substance of the Offer when it alters the price, quantity, quality or delivery of the items offered. If the deviation amounts to a minor informality or irregularity, then the Contracting Officer may allow the Offeror the opportunity to cure or merely waive the informality or irregularity where it is to the advantage of the Airports Authority to do so. A minor irregularity is one that is merely a matter of form or is some immaterial variation from the exact requirements of the Solicitation, having no effect or merely a trivial or negligible effect on price, quality, quantity or delivery of the goods or performance of the services being procured. The correction or waiver of a minor irregularity should not be otherwise prejudicial to other Offerors.

Although performance and payment bonds are not submitted with the Offer, when they are received from the apparent successful Offeror, they shall be verified as acceptable in form and substance by the Contracting Officer. Any deficiency must be resolved or the Offer will be rejected.

The Offeror's commitment to the DBE goal or SLBE requirement and submission of the good faith efforts waiver form, as applicable, will be evaluated as part of this determination.

4.5 DETERMINATION OF RESPONSIBILITY

To be considered responsible, an Offeror must be found by the Contracting Officer to meet the general standards of responsibility, including, when necessary, the responsibility of its proposed



subcontractors and, if included in the Solicitation, any special standards of responsibility. For joint ventures, each party to the venture must demonstrate its responsibility. The Airports Authority may, in certain instances, require Offerors to provide written or other evidence of a proposed subcontractor's responsibility.

Key subcontractors should also be evaluated for responsibility as part of this undertaking. For purposes of such an assessment, a subcontractor will be considered a key subcontractor if it is performing a function that is central to the overall undertaking of the Contract and where the failure of the subcontractor to complete its task would likely jeopardize the entire undertaking and such subcontractor could not be replaced without significant risk and exposure to the Authority.

4.5.1 General Responsibility

To be found responsible, an Offeror must:

- (1) Regularly supply the goods or services offered. The Contracting Officer may, however, find a newly established entity responsible if it or its employees otherwise possess the necessary resources and experience to provide the goods or services.
- (2) Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments.
- (3) Have a satisfactory record of performance.
- (4) Have a sound record of integrity and business ethics.
- (5) Have the necessary facilities, organization, experience, technical skills, and financial resources or the ability to obtain them to fulfill the terms of the Contract.
- (6) If applicable, be a legally-recognized joint venture.

NOTE: For Solicitations funded by the FTA, see Section 10.7.11 of this Manual for additional guidance on special requirements and restrictions.

4.5.2 Commitment to DBE or SLBE Participation

The Offeror's commitment to the DBE goal or SLBE requirement or submission of a request for a waiver of the goal or requirement with the Offer, as applicable, are issues of responsiveness. All other matters relating to the DBE or SLBE participation proposed by an Offeror will be treated as matters relating to the Offeror's responsibility.

4.5.3 Special Standards of Responsibility

Special standards of responsibility may be used when the nature of the procurement is such that Offerors must have specialized expertise or facilities to ensure satisfactory Contract performance. Special responsibility standards shall be set forth in the Solicitation and must apply to all Offerors.

4.5.4 Licensing Requirements

Contractor and subcontractor compliance with applicable licensing requirements are matters of responsibility.



4.5.5 Bonding Requirements

The Contracting Officer is responsible for ensuring that the amount and conditions of any bonding requirements are clearly stated in the Solicitation. At the request of the Contracting Officer, an Offeror shall furnish performance and/or payment bonds from an approved surety.

4.5.6 Sources for Determining Responsibility

The Contracting Officer may use a variety of sources to make a determination of responsibility, including, but not limited to, the prospective Contractor, sources within the Airports Authority, the U.S. General Services Administration (GSA) "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs," business and credit rating services, personal knowledge, or by doing a pre-award survey.

If available information does not provide an adequate basis for determining the responsibility or non-responsibility of a prospective Contractor, the Contracting Officer may perform a pre-award survey, obtaining the assistance and participation of specialists, as needed. The extent of the survey shall be consistent with the dollar value and complexity of the procurement and may include examination of financial statements and records and on-site inspection of plants and facilities to be used for Contract performance.

4.5.7 Responsibility Findings

Contracting Officers must document their responsibility findings prior to making award.

Communication with an Offeror for the purpose of obtaining or clarifying information needed to determine responsibility is not "discussion" as defined in Section 4.3.1.

NOTE: For Solicitations funded by the FTA, see Section 10.7.11 for additional guidance on special requirements and restrictions.

4.6 ORGANIZATIONAL CONFLICTS OF INTEREST

The Airports Authority intends to avoid even the appearance of a conflict of interest or impropriety in connection with its procurement activities. Thus, even if an Offeror is determined to be responsible, the Vice President, OSCM has the discretion to disqualify the Offeror or to take other appropriate measures based on a conflict of interest, the appearance of a conflict of interest, or another ethical consideration. If the Vice President, OSCM determines that there is a conflict of interest, the appearance of a conflict of interest, or another ethical consideration, the Vice President, OSCM may:

- (1) Disqualify an Offeror at any point during a procurement;
- (2) Rescind or terminate a Contract subsequent to Contract award; or
- (3) Take other appropriate corrective measures, such as canceling a pending Solicitation and initiating a new procurement.

A determination by the Vice President, OSCM to take a corrective measure described above shall be made in writing and included in the Contract file.



The ethical considerations that may authorize disqualification or another corrective measure are not limited to the ethics and conflict of interest rules of the Authority or the Offeror, if any. The Vice President, OSCM may properly take corrective measures whenever necessary or prudent to avoid the appearance of a conflict of interest or impropriety or otherwise eliminate doubts about the integrity and fairness of a procurement. For example, situations in which corrective measures might be warranted include, but are not limited to:

- (1) Cases where a director or employee of the Authority involved in a procurement had a relationship with an Offeror that complied with the Authority's ethics rules, but nonetheless raised questions about the procurement's integrity;
- (2) Cases where an Offeror received preferential treatment in relation to its competitors;
- (3) Cases where an Offeror hired a former Authority employee who was privy to non-public information about the procurement and involved that individual in its proposal preparation efforts; or
- (4) Cases where there is evidence suggesting collusive Bidding or similar anti-competitive practices by Offerors.

Organizational conflicts of interest, including situations in which an Offeror may be unable to render impartial and objective assistance or advice to the Authority or may have an unfair advantage over potential competitors, may also warrant disqualification or other corrective measures.

Such conflicts of interest can arise when a Contractor that develops the technical specifications for an item that will be the subject of a future procurement may have an incentive to develop specifications favoring its own products or services. If the Authority receives such Contractor assistance in preparing the specifications, a written record to that effect must be included in the Contract file and that Contractor may be prohibited from participating in that Solicitation. In addition, any Contract to assist the Authority in developing requirements for a future procurement ordinarily should include a clause prohibiting the Contractor from participating in the future procurement.

4.7 NOTIFYING AND DEBRIEFING UNSUCCESSFUL OFFERORS

The Contracting Officer will notify Offerors when their proposals are excluded from the competitive range or otherwise eliminated from the competition.

A firm may desire to learn as much information as possible concerning how its Offer was evaluated by the Airports Authority. A debriefing affords an opportunity for an unsuccessful Offeror to be informed regarding the basis for its non-selection. Where price was the only factor, a debriefing will not be conducted.

Requests for debriefing must be submitted in writing to the Contracting Officer within fifteen (15) business Days of the date of notice from the Authority that the Offeror was unsuccessful. The Contracting Officer shall hold a debriefing within fifteen (15) business Days of the date of request.



Authority debriefings are structured to protect the integrity of information submitted by all Offerors. In conducting a debriefing, the Contracting Officer will concentrate on information that can be of benefit without revealing any sensitive or proprietary data regarding other Offerors. Price discussions should be limited to the total price Offer. Another Offeror's internal pricing information (profit, overhead rates, etc.), trade secrets, manufacturing processes, or other confidential business information will not be revealed. Concentration will be on the Offeror being debriefed, its submittal, and when appropriate, a general description of the basis for the Authority's selection decision. The debriefing will address the strengths and weaknesses of the unsuccessful Offeror as related to the evaluation criteria in the Solicitation.

4.8 PUBLIC RELEASE OF INFORMATION

Pursuant to Resolution 92-16, the Board adopted the Airports Authority's Freedom of Information Policy, available on the Authority's website, which governs the release of Authority records and is hereby incorporated into this Manual as if it were expressly set forth. Under the Freedom of Information Policy, Authority records containing confidential business information of the Authority are exempt from release. The Freedom of Information Officer makes the final decision on release of documents, subject to appeal provisions of the policy. Records containing confidential business information of parties other than the Authority are also exempt from release, which may include records created by or relating to Offerors and Contractors. In addition, records that are considered privileged pre-decisional documents are exempt from release. These exemptions, when applied to records prepared during, in conjunction with, or as a result of Authority procurement are intended to protect the integrity of the procurement process and to preserve the confidentiality of certain information submitted during the process by Offerors.

The following provisions govern the release of records pursuant to requests under the Freedom of Information Policy that have been prepared during, in conjunction with, or as a result of, an Authority procurement.

- (1) Offers or Bids submitted by Offerors are exempt from release, except that, after Contract award, portions of the winning Offer or Bid that have been incorporated into the Contract and that do not contain confidential business information of the Contractor, will be released;
- (2) Price or financial Offers and price schedules submitted by Offerors, and Abstracts of Offers created by the Authority are exempt from release, except that, following the date of Contract award or the date written notice of award is sent to unsuccessful Offerors, whichever occurs first, an abstract containing the names of unsuccessful Offerors and each total price Offer (other than unit prices) will be released. If the Solicitation sought prices for multiple Contract years, the abstract will include the total price Offer for each Contract year. With respect to Solicitations conducted under IFB procedures, Bids, price schedules, and Abstracts of Offers containing information read aloud at Bid opening pursuant to Section 3.4.2 will be released after Bid opening;
- (3) The names, notes, and evaluation forms of individual EC members are exempt from release;
- (4) Evaluations conducted by the EC or its members and the rationales of an EC are exempt from release, except that an EC's final evaluation, including its evaluation for each Offeror relative to each evaluation criterion as well as the EC's rationales for each such evaluation



except to the extent they contain proposal information that an Offeror has claimed to be confidential or proprietary business information, will be released after the date of Contract award, or the date written notice of award is sent to unsuccessful Offerors, whichever occurs first, but with the names and other identifiers of EC members and unsuccessful Offerors redacted;

- (5) Confidential recommendation or information papers provided to the Board or Board Committees are exempt from release, except that the following information in such papers will be released after the date of Board action: number of proposals or Bids; identity of the winning Offeror(s); description of the evaluation process; number of Offerors on the shortlist (if any); the final evaluation for each Offeror (both by criterion and overall), except that the identities of the unsuccessful Offerors may be withheld from release; rationales for the final evaluation, except to the extent they contain proposal information that an Offeror has claimed to be confidential or proprietary business information; and the total amount of each Offeror's financial Offer;
- (6) Offerors receiving notice of Contract award to another Offeror will be provided the same information that would be released to members of the public under this Section 4.8 and the Freedom of Information Policy, except that the evaluations assigned to the proposal of the Offeror that is seeking the information will not be redacted;
- (7) During the term of a Contract, amounts the Authority has paid pursuant to the Contract will be released; and
- (8) Requests for information not addressed in this Section 4.8 that are contained in records that have been prepared during, in conjunction with, or as a result of, an Authority procurement will be considered in accordance with the Freedom of Information Policy.



CHAPTER 5: CONTRACT MANAGEMENT & ADMINISTRATION

5.1 POLICY

Following their execution, Contracts must be managed and administered to ensure that the goods and services, including concessions and construction, are delivered on time and within the Contract terms, and meet all Contract performance and other requirements. Responsibility for the management and administration of Contracts is shared by Contracting Officers, Contracting Officer Technical Representatives, and Airports Authority staff within the requesting office.

Contract management and administration includes, but is not limited to, negotiating and defining the terms and conditions of Contract modifications that are appropriate or required during the term of a Contract; overseeing Contractor performance to ensure ongoing compliance with the requirements and other terms and conditions of the Contract; reviewing and approving or disapproving adjustments to Contractor budgets, personnel, and other operational requirements which a Contractor proposes to address changing circumstances; and reviewing Contractor invoices or certified statements to ensure they are accurate.

This chapter includes a general description of the Airports Authority's policies for the management and administration of Contracts. However, in the event the policies of this chapter conflict with the terms of a Contract, the latter shall prevail.

5.2 AUTHORITY & RESPONSIBILITY

5.2.1 Contracting Officer Authority

Contracting Officers acting within the scope of their delegated authority are authorized to take the following legally binding actions: award, amendment, termination, and close out of Contracts; execution of Contract options; and settlement of Contract claims and disputes. These and similar actions modifying the terms of Contracts may be undertaken only by Contracting Officers.

5.2.2 Contracting Officer's Technical Representative (COTR)

A COTR is an employee of the Airports Authority who has been nominated by the requesting office's Vice President to manage the day-to-day activities of a Contract. A COTR's involvement usually begins before the Contract is awarded and generally is not complete until after the Contract has been closed out. Contractors and employees of Contractors are not eligible to serve as a COTR.

5.2.3 COTR Duties

A COTR's duties are defined in an appointment memo issued by the Contracting Officer, and typically consist of the following:

- (1) Preparing the Requisition, including a scope of work, an Independent Cost Estimate or other documentation supporting anticipated revenue and proposed business terms, and schedule information that addresses the Airports Authority's requirements;



- (2) Developing the procurement timeline, method, evaluation criteria, and Solicitation documents in collaboration with the Contracting Officer;
- (3) Participating in the evaluation of Offers;
- (4) Providing technical direction to and required oversight of the Contractor. This includes monitoring the Contractor's performance to ensure that it meets the requirements of the Contract;
- (5) Reviewing invoices or Contractor expenses and determining whether to approve payment or reimbursement after verifying compliance with the Contract terms;
- (6) Verifying revenues collected, as applicable;
- (7) Reviewing certified statements or other contractually required deliverables to ensure compliance with the Contract terms;
- (8) Monitoring compliance with contractual small business participation goals and requirements;
- (9) Assisting the Contracting Officer in addressing changes to a Contract proposed by the Contractor or the Authority. Ultimately, the Contracting Officer is responsible for deciding whether a proposed change is within the general scope of the Contract and, if it is not, whether there is adequate justification for a Contract modification to expand the scope. As requested, the COTR will assist the Contracting Officer in the making of these decisions. Also as requested, the COTR will assist the Contracting Officer in assessing the reasonableness of the cost of proposed changes and their impact (if any) on the Contract schedule, and in negotiating modifications to the Contract required to address the changes;
- (10) Working in a collaborative manner with the Contracting Officer to identify performance or compliance issues and developing a strategy for addressing them with the understanding that formal cure notices, show cause notices, and decisions regarding default are to be communicated only by the Contracting Officer;
- (11) Assisting the Contracting Officer in closing out the technical matters of a Contract; and
- (12) Conducting an independent assessment of the Contractor's performance during and at the conclusion of each Contract.

Any additional COTR duties specific to the Contract requirements shall be identified in the appointment memo.

5.2.3.1 Administrative Matters

Airports Authority staff may assist COTRs in addressing administrative matters that arise in the course of Contracts, so long as: (i) the actions taken by staff to address these matters are not, and do not purport to be, any of the legally binding actions identified in paragraph 5.2.1, which may only be taken by Contracting Officers, and (ii) the COTR keeps the Contracting Officer appropriately informed of these staff actions. Authority staff also may assist COTRs in their performance of the COTR duties set out in paragraph 5.2.3.



5.2.4 COTR Appointment

No person shall serve as a COTR unless he or she has completed training as required by the Airports Authority's COTR training policy. It is the COTR's responsibility to ensure and disclose to the Contracting Officer that he or she has no conflict of interest in the Contract activity that he or she will administer prior to and throughout the duration of his or her appointment as a COTR.

Once the Contracting Officer is satisfied that the COTR (i) possesses sufficient technical capability to administer the Contract; and (ii) has completed all required training in accordance with the Airports Authority's COTR training policy, and after the Contracting Officer has ensured that there is no conflict of interest in the Contract activity that the proposed COTR will administer, the Contracting Officer shall issue the COTR a notice of appointment.

5.3 AWARD AND NOTICE TO PROCEED

5.3.1 Contract Types

The Airports Authority uses a number of Contract types with various pricing arrangements and structures. Contracting Officers should select a Contract type and pricing structure that is most advantageous to the Authority. Appendix B sets forth commonly used Contract types and associated procedures.

5.3.2 Standard Contract Clauses

The Contracting Officer is responsible for ensuring that appropriate provisions required to protect the Airports Authority's interests and advance the Authority's policies are included in each Contract. The OSCM, in conjunction with the Office of General Counsel, shall develop and maintain a set of standard Contract clauses. Unless otherwise approved by the Office of General Counsel, these Contract clauses shall be incorporated into every Contract entered into by the Authority.

From time to time, an Offeror may request that a specific Contract clause be modified. In such instances, the Contracting Officer shall confer with the requesting office, Risk Management, or the Office of General Counsel, as appropriate, prior to incorporating the change into the resulting Contract.

Absent express acknowledgement and acceptance by the Authority, language in a proposal shall not be deemed to supersede the language in the Solicitation.

5.3.2.1 Airports Authority Policies, Plans, and Goals

From time to time, the Board may adopt and amend policies, evidenced by resolution, such as the policy that established a minimum wage for businesses under certain specified Contracts (the "Living Wage Policy") and certain businesses operating at the Airports (the "Workers Wage Policy"). The Authority may also establish plans, such as the development of a corporate Sustainability Plan, which includes the objective of developing and maintaining a culture of sustainable administration and the development of diversity and inclusion plans, which include the objective of developing and maintaining a culture of diversity and inclusion in all aspects of the Authority's operations, including the procurement of goods and services. Current versions of policies and plans, including objectives and goals, are available on the Authority's website. The



Contracting Officer will clearly identify whether any current or future policy, plan, or goal applies to a given Solicitation and, if so, shall include the relevant requirements of such in the Solicitation.

5.3.2.2 Grant Funding

Contracts that include Airport Improvement Program or other similar grant funds must conform to the mandatory provisions of the grant. Contracting Officers shall use the appropriate Solicitation and Contract provisions as required by the particular funding source.

5.3.3 Pre-Award Review

Prior to award, the Contracting Officer will ensure that sufficient funds are available and the award amount does not exceed their delegated authority. The Contracting Officer will also ensure that, if required: bonds and insurance are in place; Board approval is obtained; and the action has been coordinated with the Office of General Counsel. The Contracting Officer will make an award only after all required approvals have been obtained.

5.3.4 Pre-Performance Conferences

The Contracting Officer may schedule a pre-performance conference when he or she determines such a conference is in the Airports Authority's best interests.

5.3.5 Notice to Proceed

For construction and other Contracts that require issuance of a notice to proceed, the Contracting Officer shall ensure that Contractors are aware that they must not commence Contract performance until such time as they receive a notice to proceed. In some circumstances, the notice to proceed may be issued concurrently with Contract award; however, the Contracting Officer must ensure that all necessary prerequisites for commencement of performance are in place.

Unless otherwise authorized by the CEO, a Contracting Officer shall not authorize a Contractor to commence performance under a Contract before the effective date of Contract award. In the event performance is authorized to commence prior to award, the Contracting Officer shall ratify such performance at the time the Contract is awarded.

5.4 CONTRACT MODIFICATIONS

All changes to the terms of a Contract require written modification by the Contracting Officer.

Changes in the performance or requirements of a Contract, along with any resulting change in the value or other terms of the Contract, may be authorized by the Contracting Officer only after reviewing the circumstances giving rise to the change and determining it falls within the general scope of the Contract. A change in work that falls outside the general scope of the Contract shall be treated as a new procurement.

5.4.1 DBE & SLBE Participation

When modifications increase or decrease the total dollar value of the Contract, the Contractor shall adjust the DBE or SLBE participation based on the modification to ensure it will continue to meet the DBE goal or SLBE requirement stated in the Contract. The Contractor must submit revised



documentation acceptable to the Airports Authority, which reflects changes in the DBE or SLBE participation associated with modifications to the Contract.

5.4.2 Contract Options

Contracts may include priced options for Contract extensions or changes in Contract performance requirements. The inclusion of an option does not imply that the Airports Authority is obligated to exercise any or all of the options during the term of the Contract. Upon recommendation by the COTR, a Contracting Officer may issue a written modification to exercise a Contract's priced option.

The use of un-priced option years in Contracts is not a common practice, and a justification must be prepared and approved by the Vice President, OSCM prior to the inclusion of an un-priced option in a Contract. At the time of execution, an un-priced/unevaluated option requires Board approval as a sole source procurement action if the option is estimated to be over \$200,000.

NOTE: For Solicitations funded by the FTA, see Section 10.7.23 of this Manual for additional guidance on special requirements and restrictions.

5.5 CORRECTION OF MISTAKES AFTER AWARD

When a mistake is not discovered until after the award, the Contracting Officer may:

- (1) Modify the Contract;
- (2) Rescind the Contract; or
- (3) Make no change to the Contract.

Such actions may be taken by the Contracting Officer only when clear and convincing evidence of the parties' intention exists. The Contracting Officer should confer with the Office of General Counsel prior to taking any action to correct a mistake after award.

NOTE: For Solicitations funded by the FTA, see Section 10.7.25 of this Manual for additional guidance on special requirements and restrictions.

5.6 PAYMENT

The Airports Authority is committed to paying Contractors in a timely manner, and Contracting Officers, COTRs, and financial personnel shall take reasonable measures to ensure payments legitimately due to Contractors are made promptly, in accordance with the terms of the Contract.

5.6.1 Prepayments

As a matter of policy, the Airports Authority generally makes Contract payments upon receipt of goods or services. Exceptions to such policy require good business judgment. Prior to agreeing to any prepayment arrangement, the Contracting Officer shall obtain the approval of the Vice President, OSCM, the Vice President of Finance, and the Vice President of the requesting office. Justification of prepayment must be documented as part of the Contract file.



NOTE: For Solicitations funded by the FTA, see Section 10.7.27 of this Manual for additional guidance on special requirements and restrictions.

5.6.2 Timing of Payments

In general, the Airports Authority will use reasonable efforts designed to ensure that payments are made in accordance with the terms of the Contract, except as follows:

- (1) When the Contract provides for withholding retainage from progress payments or liquidated damages and the circumstances are such that withholding is appropriate, the Contracting Officer shall enforce such provisions and maintain a record of amounts withheld, including the basis for withholding;
- (2) When elements of the amount invoiced by the Contractor are not acceptable because they are vague or incomplete, because of poor workmanship, or because of lack of progress;
- (3) When the Contractor has been overpaid or otherwise owes the Authority money as a result of the Contractor's actions or inactions under the Contract;
- (4) When it is appropriate to apply a significant setoff or a recoupment. A setoff is a deduction from payments due the Contractor under one Contract for sums due the Authority under one or more other Contracts. Recoupment is a deduction of sums due the Authority (damages for delay or defective performance, warranty costs, repair costs, and the like) from the payment due; or
- (5) As a result of judicial action or applicable law.

A Contracting Officer should coordinate with the Office of General Counsel prior to taking action under (4) or (5) above.

5.7 SUBCONTRACTOR PAYMENT

The Airports Authority is committed to prompt payment of subcontractors, as this promotes fairness and encourages good performance. In addition, the Authority also has an interest in ensuring its policies support the development and viability of small businesses, including MBEs and WBEs.

However, subcontractors have no privity of Contract with the Authority, and the Authority generally does not become involved in business relationships between Prime Contractors and their subcontractors. The Authority does not adjudicate blame or responsibility in situations of non-payment to a subcontractor, and the Authority is often not aware of the payment terms that have been agreed to by a Prime Contractor and subcontractor.

Prime Contractors are completely responsible for the quality of the performance by their subcontractors and for all payments to the subcontractors. In certain situations, if either the Prime Contractor or subcontractor is a DBE or SLBE, the DSD and the Contracting Officer may be available to facilitate resolution of subcontractor non-payment issues or concerns. In continuing situations, the DSD can recommend the Contracting Officer take action.

NOTE: For Solicitations funded by the FTA, see Section 10.7.28 of this Manual for additional guidance on special requirements and restrictions.



5.8 SUSPENSION OF WORK

Except when a Contract expressly provides to the contrary, the Airports Authority reserves the right to suspend work under any Contract. Typically, a suspension of work will be ordered because of events that are beyond the control of either the Authority and the Contractor and which make continued performance financially ill-advised or when performance issues have developed and it is necessary to temporarily suspend the work while these issues are being resolved. A Contracting Officer shall not include in any Contract a clause that limits the Authority's right to suspend work unless such clause has been reviewed and approved by the Vice President, OSCM and the Office of General Counsel.

5.8.1 Suspensions for the Convenience of the Authority

A Contracting Officer may direct a Contractor to suspend work for the convenience of the Airports Authority when an event occurs which raises questions about whether the work should proceed as originally planned, be otherwise modified, or cancelled. In such an instance, the purpose of the suspension is to allow the Authority to assess its options and to make a decision that is in the best interests of the Authority.

When work is suspended for the convenience of the Authority, the Contractor will be entitled to an appropriate equitable adjustment to the period of performance and the Contract's costs unless the Contract expressly provides to the contrary.

5.8.2 Suspensions Incident to Performance Issues

A Contracting Officer may direct a Contractor to suspend performance, either in whole or part, when performance issues arise. Prior to issuing any such notice, the Contracting Officer should confer with the COTR and, if appropriate, the Office of General Counsel. Such a suspension of work is typically issued to give the Contractor and the Airports Authority the necessary time to resolve performance issues.

Under such a suspension, the Contractor will not be entitled to an equitable adjustment to either the period of performance or the Contract price. If, however, it is subsequently determined that the Contractor was not in default of its obligations, such a suspension will be deemed to have been given for the convenience of the Authority, and the Contractor will be entitled to an appropriate equitable adjustment.

5.9 CURE NOTICE

The COTR is responsible for monitoring the Contractor's performance and shall keep the Contracting Officer fully informed of any technical or contractual difficulties encountered, including, but not limited to, progress of work. The COTR and Contracting Officer shall document incidents of poor performance and create a record that will support formal actions to enforce Contract terms and conditions.

The purpose of a cure notice is to inform a Contractor that its performance is deficient and that the Contractor has a specified period in which to cure such deficiency or deficiencies. Any decision to issue a formal cure notice shall be made, and the cure notice issued, by the Contracting Officer. Due consideration shall be given to related Contract clauses.



5.10 SHOW CAUSE NOTICE

If the Contractor fails to cure the deficiencies within the time allowed in the cure notice, the Contracting Officer, with approval of the Vice President, OSCM, and after coordination with the Office of General Counsel, may send a show cause notice to the Contractor and, if applicable, the surety.

5.11 TERMINATION FOR DEFAULT

All Contracts shall include a default clause. The clause should be tailored to reflect the nature of the underlying Contract, the risks to which the parties are exposed, and issues that are likely to be encountered if a default were to occur.

Prior to terminating a Contract for default, the Contracting Officer shall obtain the approval of the Vice President, OSCM and the Office of General Counsel and document the file accordingly.

NOTE: For Solicitations funded by the FTA, see Section 10.7.29 of this Manual for additional guidance on special requirements and restrictions.

5.11.1 Termination for Default Notice

In addition to complying with the express requirements of the Contract, a notice of termination for default shall:

- (1) Set forth the Contract number and date;
- (2) State the effective date of the termination;
- (3) Describe the act or omissions, and the extent of the resultant delay, if applicable, constituting the default;
- (4) State that the Contractor's right to proceed further with performance of the Contract (or of a specified portion of the Contract) is terminated;
- (5) State that the Airports Authority may cause the Contract to be completed and that the Contractor will be held liable for any increased cost;
- (6) State that the Authority reserves all rights and remedies provided by law or under the Contract; and
- (7) State that the notice constitutes a decision that the Contractor is in default, as specified, and that the Contracting Officer has determined that the default is not excusable.

The termination notice shall be provided to the Contractor, and a copy shall be furnished to the Contractor's surety, if applicable. If the Contracting Officer determines it to be in the Authority's best interests, the surety should be requested to advise if it desires to enter into an arrangement for completion of the work. In addition, Accounts Payable shall be notified to withhold further payments under the terminated Contract pending further advice. Promptly after issuance of the termination notice, the Vice President, OSCM, in coordination with the Contracting Officer, COTR, and the COTR's manager or Vice President, shall determine the manner in which the work is to be completed.



5.11.2 Re-procurement of Goods or Services

Where the goods or services are still required after termination, re-procurement of the goods or services that are the same as, or similar to, those called for in the Contract may be made after termination. Such re-procurement shall be at as reasonable a price as practicable considering the required quantity and the time within which the goods or services are required. The Contract for the re-procurement may be made for a quantity in excess of the undelivered quantity called for in the Contract when needed, however costs charged against the defaulting Contractor may not exceed the undelivered quantity under the terminated Contract.

If the re-procurement is effected at a price in excess of the price of the goods terminated, the Contracting Officer shall make a written demand on the Contractor for the total amount of such excess and shall take such other action as required for collecting claims in favor of the Airports Authority.

5.11.3 Other Damages

If a Contract is terminated for default, the Contracting Officer may take appropriate action for ascertaining and collecting any other damages, including liquidated damages, that the Airports Authority may be entitled to under the Contract. Such damages are in addition to any excess cost of re-procurement.

5.12 TERMINATION FOR CONVENIENCE

All Contracts shall include a termination for convenience clause. The clause should be tailored to reflect the nature of the underlying Contract, the risks to which the parties are exposed, and issues that are likely to be encountered if a termination for convenience were to occur.

Prior to terminating a Contract for convenience, the Contracting Officer shall obtain the approval of the Vice President, OSCM and the Office of General Counsel and document the file accordingly.

5.12.1 Termination for Convenience Notice

In addition to complying with the express requirements of the Contract, a notice of termination for convenience shall:

- (1) Set forth the Contract number and date;
- (2) State the effective date of the termination;
- (3) State whether or not all work is to be stopped, and the specific work to be terminated if the termination is partial; and
- (4) Include special instructions about the continuation of certain work, disposition of inventory, or other matters, if applicable.

5.12.2 Contractor's Responsibilities

The notice of termination and any termination provisions govern the Contractor's obligations. Upon receiving the notice of termination, the Contractor must stop work under the Contract, as directed. Any work beyond that authorized by the notice of termination is at the Contractor's own risk.



The Contractor's obligations also require termination of all unperformed or partially performed subcontracts, Purchase Orders, and Blanket Purchase Agreements relating to the terminated portion of the Prime Contract, and to settle all outstanding liabilities and claims arising from such termination.

If directed by the Contracting Officer, the Contractor must assign all rights and deliver to the Airports Authority all materials, data, plans, drawings, or specifications, as applicable, associated with the terminated portion of the Contract. The Contractor and any subcontractors must protect and preserve any property related to the Contract in which the Authority may acquire a right or interest; transfer of title accompanies such delivery.

5.12.3 Termination Settlement

The Contracting Officer shall confer with the Contractor and develop a specific plan for effecting the termination settlement. The discussion should cover all topics related to the principles, policies, and procedures governing the settlement, including but not limited, to the extent of the termination; the status of plans, drawings, and other data; the status of the continuing work; the Contractor's responsibility for termination of subcontracts; the transfer of title to the Airports Authority of materials, data, drawings, and specifications; and the schedule for the Contractor's submission of settlement cost proposals, inventory schedules, and accounting data. A detailed account of the discussion shall be made a part of the Contract file.

After issuing a notice of termination for convenience, the Contracting Officer has an obligation to consider any settlement proposal submitted by the Contractor and shall make a fair and prompt settlement with the Contractor. Contractors must promptly, but no later than one year from the effective date of termination, unless extended in writing by the Contracting Officer, submit their claim for fair compensation for the terminated work.

5.12.4 Termination Settlement Reviews

All proposed termination settlement agreements shall be reviewed by the Office of General Counsel prior to submission to the Contractor for signature.

5.13 CONTRACT CLOSE OUT

The Contracting Officer has a responsibility to the Contractor to see that retainage is released and payment of any monies due is made promptly. Prior to closing out a Contract, Contracting Officers shall confirm that all outstanding contractual obligations have been met, including confirming that no outstanding insurance claims exist. Contracting Officers shall issue a closeout modification when the final price is different from the current Contract amount, when necessary to establish final quantities for unit priced items, or for other appropriate reasons. COTRs shall assist in this effort and provide support to the Contracting Officer, as requested. As part of the close out process, the Contractor may be required to sign a release.

5.13.1 Exceptions to Full Release of Claims

A Contract may be completed except for a minor issue for which pending litigation, arbitration, or other reason requires an extended period of time to resolve. In such cases, regular closeout procedures would hold the entire Contract open for an extended period of time. However, with concurrence from the Office of General Counsel, the Contracting Officer may prepare and have



the Contractor sign a release of claims, except for the issue(s) in question, reserving both parties' rights in the future settlement of those issue(s) in question. Upon receipt of such release, the Contracting Officer may authorize final payment in total, or may reserve enough funds to cover the issue in question, subject to the approval of the Vice President, OSCM.

5.13.2 Re-Opening a Closed Contract

The Airports Authority may re-open a closed Contract only when the following circumstances exist:

- (1) The work being added is within the general scope;
- (2) The quality of work done by the Contractor under the closed Contract is found to be acceptable;
- (3) The reopening is conducted within one year of the close out date;
- (4) The cost of work being added does not exceed \$500,000; and
- (5) The cost of the work being done does not exceed 20 percent of the closed-out Contract amount.

Prior to re-opening a Contract, the Contracting Officer must document that all of the foregoing conditions have been met and that it is in the best interests of the Airports Authority to re-open the Contract rather than undertake a new Solicitation. The Contracting Officer should also confirm that the Contractor is willing to re-open the Contract. Further, the Contracting Officer shall prepare a written justification and obtain the approval of the Vice President, OSCM.

NOTE: For Solicitations funded by the FTA, see Section 10.7.28 of this Manual for additional guidance on special requirements and restrictions.

5.14 UNAUTHORIZED COMMITMENTS & RATIFICATIONS

Unauthorized commitments occur when the Airports Authority receives goods or services without an enforceable Contract or outside of the scope of an existing Contract or an individual without delegated Contracting authority binds the Authority for the purchase or receipt of goods or services.

The Authority shall not be bound by any unauthorized commitment unless it is ratified.

5.15 CONTRACTOR EVALUATION

COTRs shall assess Contractor performance through written evaluation during and after Contract completion.

Contractor evaluations may be used when considering past performance during future Solicitations.



CHAPTER 6: SPECIAL CONSIDERATIONS FOR ARCHITECTURAL/ENGINEERING (A/E), CONSTRUCTION & CONCESSIONS CONTRACTS

6.1 A/E SERVICES

The selection of Architectural/Engineering (A/E) firms for design and consultant services shall generally follow the competitive proposals (RFP) procedures pursuant to Section 3.5, except as modified by the procedures in this Section 6.1.

6.1.1 Evaluation Criteria

A/E Offerors are required to submit a completed Standard Form 330 (SF 330), Architect-Engineer Qualifications, describing in Part I its qualifications for a specific Contract and in Part II its general professional qualifications. In addition to the information requested on the SF 330, the Airports Authority may request information from A/E firms that is deemed relevant, including:

- (1) Professional qualifications necessary for satisfactory performance of required services;
- (2) Past Contract performance with emphasis on cost control, quality of work, flexibility in accommodating changes, and compliance with performance schedules;
- (3) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;
- (4) Capacity to accomplish the work in the required time; taking into consideration current and projected workload; and
- (5) Location of the Contractor's place of business as it relates to or impacts the effectiveness or efficiency in delivery of services to the Authority.

The A/E Solicitation shall clearly state the evaluation criteria that will be used in awarding the Contract. These criteria will be listed in descending order of relative importance.

Although price will not serve as a basis for the evaluation of A/E Solicitation responses, Solicitations may request that Offerors include a price proposal as part of the responses. The purpose of this price proposal is to provide the Contracting Officer with a basis to begin price analysis and negotiations.

6.1.2 A/E Evaluation Committee Procedures

In general, proposal responses shall be evaluated in accordance with the EC procedures in Section 3.5.7. After the EC has completed its initial evaluation, the committee may prepare a shortlist of at least three of the most highly qualified firms. The shortlist will be ranked in descending order of qualifications and will be reviewed by the Contracting Officer to ensure that it accurately reflects the EC's deliberations and final rankings. The Contracting Officer shall then notify the shortlisted firms of their selection, promptly notify firms who were not shortlisted, and may schedule oral interviews. If the original Solicitation did not include project-specific evaluation criteria or a detailed scope of work, the Contracting Officer shall furnish such to the shortlisted firms for their preparation for the interviews. A list of questions should be prepared prior to the interview session but should not be revealed to the firms being interviewed.



6.1.3 Negotiating With Most Qualified A/E Firms

If it was not required and submitted as part of the A/E firm's initial submission, the Contracting Officer shall solicit a price proposal from the most qualified A/E firm and analyze and negotiate the firm's price proposal. The Contracting Officer's goal is to reach a contractual agreement with the most qualified firm. However, if in the judgment of the Contracting Officer, a fair and reasonable price or other Contract terms and conditions cannot successfully be negotiated, the Contracting Officer shall terminate negotiations and proceed to negotiate with the next most qualified firm. The procedure shall continue until a mutually satisfactory Contract can be negotiated.

6.2 CONSTRUCTION

Construction includes the building, alteration, dismantling, demolition, or removal of buildings, structures, or improvements. Construction services shall be competitively procured using the methods detailed in Chapter 3 or through alternative delivery methods.

6.2.1 Alternative Delivery Method Contracts

The Airports Authority may use construction management at-risk (CMAR) and design-build delivery methods when the Contracting Officer and COTR determine that such a delivery method is in the Authority's best interests. Prior to issuing any such Solicitation, however, the Contracting Officer shall first obtain the approval of the Vice President, OSCM and shall confer with the Office of General Counsel to develop the appropriate language for the Solicitation.

6.2.1.1 CMAR

Under the CMAR delivery method, the general Contractor is engaged early in the design phase to work with the project's architect in order to address cost management, constructability, and design coordination issues. A CMAR Contract can expedite overall project delivery timelines as it allows early phases of the construction work to proceed while other portions of the design are being finalized.

Under a CMAR Contract, the general Contractor Offers a construction management fee for the entire project and provides an estimate of its general conditions costs at project inception. As the project unfolds, the CMAR Contractor will then manage a competitive procurement process for the various subcontractors, and ultimately, a guaranteed maximum price will be agreed upon by the CMAR Contractor and the Airports Authority.

6.2.1.2 Design-Build

The Airports Authority may procure design-build Contracting through one of the following methods:

- (1) Bridging Design-Build. In a bridging design-build procurement, the Authority will request a preliminary set of design documents to be prepared and issue those documents as part of the Solicitation. Unless the Contracting Officer determines that a different level of design detail is in the Authority's best interests, such documents will be progressed to either the schematic or design development level of completion, and the Offerors will be required to provide either a firm, fixed price or a guaranteed maximum price to complete the design and then construct the project. In most instances, bridging design-build will be



procured through competitive proposal; however, the Contracting Officer may elect to use a two-step IFB if the Contracting Officer determines that such is in the best interests of the Authority.

- (2) Progressive Design-Build. In a progressive design-build procurement, the Authority will issue a brief programmatic description of the project. In addition to their qualifications and experience, Offerors will be required to submit a proposed management plan and a price to manage and implement the project. The price so submitted should cover the Offeror's profit and overhead, the cost of general conditions, and the cost of its design team. Given the absence of a design, the cost of construction is not provided during the Solicitation phase, but rather will be developed subsequent to award and after the design has progressed to either the schematic or design development phase. Progressive design-build Contracts will be awarded through competitive proposal.
- (3) Two-Phase Design-Build. The two-phase design-build process will be used when the Authority desires to obtain a firm price for the construction phase of a project (either as a lump sum or a guaranteed maximum price) prior to development of design documents. In selecting the two-phase design-build process, the Contracting Officer shall consider the following factors: (i) the extent to which the essential project requirements can be adequately defined; (ii) the time constraints for delivery of the project; (iii) the capability and experience of potential Contractors; (iv) the suitability of the project for use of the two-phase selection process; and (v) the potential benefits associated with a process where design solutions are evaluated as part of the source selection process.

6.2.2.1 Procedures for Two-Phase Design-Build

6.2.2.1.1 Phase One

Phase one of the Solicitation shall include the: (i) scope of work, (ii) phase one evaluation factors, which shall include technical approach (but not detailed or technical information), (iii) technical qualifications, such as specialized experience and technical competence, (iv) capability to perform; and (v) past performance of the Offeror's team (including the A/E and construction team members).

The Solicitation shall also establish a maximum number of Offerors that, at the conclusion of the first phase, will be invited to submit proposals in phase two. The maximum number of Offerors in phase two shall not exceed five, unless the Contracting Officer determines, for the particular Solicitation, that a greater number of Offerors is in the Airports Authority's best interests and consistent with the purposes of the two-phase procurement process. The Solicitation shall not seek or evaluate cost- or price-related information, or detailed designs or technical information.

6.2.2.1.2 Phase Two

Phase two consists of the issuance of a RFP to each Offeror identified in phase one and a review of the proposals submitted by such Offerors. The RFP will request that each Offeror submit (i) a price proposal (including financing costs, if applicable); (ii) a technical proposal; and (iii) detailed design documents in three separate packages. The method and/or criteria for the evaluation of these proposals, and the due date of their submission, shall be stated in the RFP.



6.3 CONCESSIONS

Concessions are businesses that sell goods and services to the public at the Airports. To engage in a concession, concessionaires must have permission from the Authority in the form of a Contract or permit. In exchange for the privilege of operating a concession on Authority property, Contractors pay fees or other forms of compensation to the Authority.

Concessions shall be solicited through the procedures authorized by this Manual.

6.3.1 Legal Review of Concessions Contracting Activity

All concessions Solicitations and Contracts, and amendments thereto shall be reviewed by the Office of the General Counsel prior to advertisement or execution.

6.3.2 Performance Guarantees

Each concessions Contract will require the Contractor to guarantee its performance of the Contract. The performance guarantee requirement will be stated in the Solicitation and may be provided in the form of a bond, letter of credit, cash, or other form permitted by the Contract.

6.3.3 Contract Extension Requests

Any time the CEO's authorization to extend a concessions Contract is to be used, a memorandum from the Vice President, OSCM shall be sent to the CEO with appropriate justification for the extension and retained within the Contract file.

Extensions beyond 12 months shall be considered to be a new sole source Contract, and compliance with sole source Contract procedures and Board approval of the extension is required. Extension requests must be initiated by the Vice President, OSCM, must state the reasons for the request, and must be sent to the CEO.



CHAPTER 7: DISPUTES

7.1 POLICY

The following provisions contain the Airports Authority's general procedures for the handling of Contract disputes. Other dispute resolution procedures may be appropriate for certain Authority Contracts and may be used if approved by the Vice President, OSCM and coordinated with the Office of General Counsel.

It is the Authority's policy to encourage resolution of disputes by mutual agreement between the Contracting Officer and the Contractor. Consistent with this intent, Authority requires, as a condition precedent to the initiation of litigation, the exhaustion of the administrative dispute procedure contained in the Contract. If the dispute is not resolved by the administrative disputes procedure, the Contractor may proceed to litigation in accordance with the agreements contained in the Contract.

NOTE: For Solicitations funded by the FTA, see Section 10.7.32 of this Manual for additional guidance on special requirements and restrictions.

7.2 WAIVER OF JURY TRIAL

Each Airports Authority Contract shall include a waiver of jury trial provision that is approved by the Office of General Counsel.

7.3 DISPUTES PROVISION

Each Airports Authority Contract shall include a disputes provision that is approved by the Office of General Counsel.

The provision must provide for the exhaustion of the disputes procedure as a condition precedent to the initiation of litigation and require the Contractor to proceed diligently with performance of the Contract's requirements, including the disputed portions, pending resolution of any dispute. The disputes provision shall also address the claim submission requirements, such as notice, the time for presenting, certification, and documentation.

Monetary claims based on anticipatory profits are prohibited. Monetary claim requests based on a total cost approach are prohibited. Time extension requests or claims on a total time approach are prohibited.

7.3.1 Claims Review and Disposition

The comprehensive disputes provision shall also include a procedure for claims review and disposition. The following topics shall be addressed in the procedure: Contracting Officer Discussions, Alternative Disputes Resolution Procedures and the issuance and finality of a Contracting Officer's Decision, including impasse and litigation. The general nature of these topics is addressed below.



7.3.1.1 Contracting Officer Discussions

Discussions between the Contracting Officer and the Contractor concerning the claim presented shall occur within a reasonable period of time after submission of the claim and receipt by the Contracting Officer of sufficient information, including information resulting from an audit, if deemed necessary. Discussions shall be conducted in good faith for the resolution of the dispute, including the exchange of relevant information. If requested by the Contracting Officer, the COTR shall provide the Contracting Officer with a written response to the claim that references the applicable provisions of the statement of work or Contract requirements and may include a specific request that the COTR obtain additional information or audit access, or both. The Contractor shall provide such additional information or audit access and failure to do so shall be a bar to the claim.

7.3.1.2 Alternative Disputes Resolution (ADR)

The Contracting Officer should consider the inclusion of a Contract provision that requires the exhaustion of an ADR procedure prior to litigation. One form of ADR that should be considered is non-binding evaluative mediation. Any such Contract provision may include the following: the time and place of mediation; that the mediation is conducted pursuant to the Contract; the selection of the neutral mediator; that all statements made during the course of the mediation are confidential, are privileged settlement discussions, are not party admissions and are made without prejudice to any party's legal position; that materials prepared for the mediation are not subject to disclosure in any other judicial or administrative proceeding; for informal discovery in the form of production or inspection of certain categories of documents; and that the costs of the mediator and any incidental costs associated with holding the mediation shall be split evenly between the Contractor and the Airports Authority.

7.3.1.3 Impasse and Litigation

If discussions with the Contracting Officer or, if required, an ADR procedure do not result in an agreement, the Contracting Officer can declare an impasse. Upon the declaration of an impasse, the Contractor shall request a written final decision by the Contracting Officer and provide documentation to support its claim. The Contracting Officer shall issue a final decision within sixty (60) Days from receipt of the request unless the Contracting Officer determines the dispute is complex in nature. The final decision of the Contracting Officer shall be final and conclusive unless within thirty (30) Days from receipt of the Contracting Officer's final decision, the Contractor mails or otherwise furnishes a written notice of appeal in accordance with the Contracting Officer's Final Decision.

7.3.1.4 Litigation

Following completion of the administrative disputes resolution process without an agreement, as indicated by the timely receipt of a notice of appeal, the dispute may be resolved by litigation without a jury before a court of competent jurisdiction within the Commonwealth of Virginia.

7.4. Remedies for Inappropriate Claims

Each Airports Authority Contract shall include a remedies provision that is approved by the Office of General Counsel that contains remedies for reckless or frivolous claims and false, misleading, or material misrepresentations relating to claims.



CHAPTER 8: SUSPENSION & DEBARMENT

8.1 POLICY

The Authority may suspend or debar a Contractor from entering into new Contracts or subcontracts in accordance with the procedures in this chapter to make ineligible for Contracting opportunities those Contractors that (1) lack business integrity or honesty; (2) lack the responsibility to satisfactorily perform Contract work; or (3) evidence any other cause of such serious and compelling nature as to affect the present responsibility of the Contractor.

8.2 DEFINITIONS (FOR PURPOSES OF THIS CHAPTER 8)

- (1) *Affiliate.* A business, organization, person, or individual connected to another by the fact that one controls or has the power to control the other or by the fact that a third-party controls or has the power to control both. The Airports Authority has the discretion to determine whether an entity is an affiliate by considering such factors as common ownership, common management, shared or overlapping facilities, equipment, and/or employees, identity of interests among family members and/or that the business entity is managed or organized by owners, operators, management, and/or immediate family of an entity that previously contracted with the Authority.
- (2) *Authority Contractor.* An individual, company or other legal entity that directly or indirectly (e.g., through an affiliate) submits a Bid or Offer or is awarded a Contract or subcontract to supply goods or services, to perform construction or to perform a concession for the Airports Authority.

8.3 DELEGATION OF AUTHORITY TO MAKE SUSPENSION AND DEBARMENT DETERMINATIONS

The COO has the authority to determine whether to suspend and debar any Authority Contractor.

8.4 SUSPENSION

The COO may, in the interest of the Airports Authority, immediately suspend an Authority Contractor upon receiving information there may be cause for Debarment of an Authority Contractor for any of the causes listed in Sections 8.5.1 or 8.5.2. The suspension will generally continue until the completion of Debarment proceedings, unless the COO determines that a lesser period is appropriate.

The existence of a cause for Debarment does not necessarily require the Authority Contractor be suspended. The Authority will consider the seriousness of the Authority Contractor's acts or omissions and may, but is not required to, consider mitigating factors.

8.4.1 Procedures for Suspension

The COO will, as soon as practicable, notify an Authority Contractor of the suspension by providing written notice to the last known address of the Authority Contractor by certified mail no later than ten (10) Days after the effective date of the suspension and will state (1) the Authority Contractor



has been suspended; (2) the reasons for the suspension; (3) the effective date of the suspension; and (4) that the suspension shall remain in effect until the completion of Debarment proceedings, which are to be initiated as soon as practicable after the suspension begins, unless the COO determines that a lesser period of suspension is appropriate. The notice of suspension will also advise the Authority Contractor it may, within fifteen (15) Days of the date of notice, submit, in writing, any information in opposition to the suspension.

The COO will consider the information submitted by the Authority Contractor and decide, in his or her discretion, whether to revoke the suspension or to continue the suspension pending completion of the Debarment proceedings. The COO will provide written notice to the Authority Contractor of the determination.

8.5 DEBARMENT

The Airports Authority may debar an Authority Contractor for any of the causes listed in Section 8.5.1. The existence of any of the causes for Debarment does not necessarily require that an Authority Contractor be debarred, as the decision to debar is within the discretion of the Authority. The Authority may, but is not required to, take into account what mitigating factors it deems relevant.

8.5.1 Causes for Debarment

The Airports Authority may debar an Authority Contractor for a period of up to five (5) years for any of the following reasons:

- (1) Conviction of a criminal offense or a civil judgment for commission of a fraud, commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, tax evasion or receiving stolen property;
- (2) Conviction of a criminal offense incidental to obtaining or attempting to obtain Contracts or subcontracts or in the performance of a Contract or subcontract;
- (3) Conviction of a criminal offense under a Federal antitrust statute arising out of the submission of Bids or proposals;
- (4) Inclusion in the General Services Administration "System for Award Management" or any successor thereto;
- (5) Debarment or suspension by any state or local government entity;
- (6) Commission of an unfair trade practice including, but not limited to, obtaining or using confidential or proprietary information of a competitor or the Authority to obtain an Authority Contract or subcontract;
- (7) Commission of any other offense indicating a lack of business integrity or honesty, including, but not limited to, Offering bribes or kickbacks to Authority employees or Board Members to obtain business, making knowingly false representations or certifications to the Authority, or engaging in any conduct that led to or induced an Authority employee or Board Member to violate the Authority's Codes of Ethics;



- (8) Serious violation(s) of the terms of an Authority Contract or subcontract, such as violating any Contract provisions relating to the Authority's Codes of Ethics, willful failure to perform in accordance with specifications or time limits provided in the Contract, willful failure to pay monies owed under an Authority concessions Contract, a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Authority Contracts or subcontracts, including any applicable DBE and SLBE provisions; or
- (9) Any other cause that, in the discretion of the Authority, is of a serious and compelling nature.

8.5.2 Debarment of Contractor Affiliated or Connected with Another

If an individual or Authority Contractor commits an impropriety that is cause for Debarment, that impropriety may be imputed to any other Authority Contractor that is an Affiliate of the individual or Authority Contractor that committed the impropriety. Likewise, when a firm is involved in criminal, fraudulent or other improper conduct, any person who participated in, or any person affiliated with or connected to the firm who knew of or had reason to know of the impropriety, may be debarred.

8.6 DEBARMENT PROCEDURES

8.6.1 Notice of Proposed Debarment

The COO may initiate Debarment proceedings by providing to the Authority Contractor a written Notice of Proposed Debarment (NPD), sent to the Authority Contractor's last known address by certified mail. The NPD will state (1) Debarment is being considered; (2) the reasons for the proposed Debarment; (3) the anticipated period of Debarment; and (4) the proposed effective date. The NPD will also advise the Authority Contractor that it may, within fifteen (15) Days of the date of the NPD, submit, in writing, to the addressee set forth in the NPD, any information in opposition to the proposed Debarment ("Opposition").

The COO will, within fifteen (15) Days of receipt of the Opposition, notify the Authority Contractor of when he or she anticipates making a determination, whether an evidentiary hearing will be held, and if so, whether a hearing officer will be appointed.

If the Authority Contractor does not submit an Opposition within the time allowed, the Debarment will become final with no further review by the Airports Authority.

8.6.2 Debarment Hearing

In actions based upon a conviction or civil judgment, or in which there is no genuine issue of material fact, the COO shall make a decision on the basis of all the information in the administrative record, including any submission made by the Authority Contractor. In Debarment actions not based upon a conviction or civil judgment, if the COO finds that the Opposition raises a genuine dispute over facts material to the proposed Debarment, the COO shall: (1) afford the Authority Contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any evidence or testimony upon which the Debarment is based; (2) make an electronic record of the proceedings; and (3) make a copy or transcription of the record available at cost to the Authority Contractor upon request.



8.6.3 Hearing Officer

If the COO determines that an evidentiary hearing is required, he or she may, but is not required to, appoint a hearing officer. Such hearing officer shall be a licensed attorney who is not then a current employee of the Airports Authority nor shall such individual have been an employee of the Airports Authority in the five (5) years preceding such appointment nor shall such individual have served as counsel to the Airports Authority in the five (5) years preceding such appointment. If the COO elects to appoint a hearing officer, he or she shall provide the Authority Contractor with written notice of such proposed appointment. If the Authority Contractor believes that such individual should not serve as the hearing officer, the Authority Contractor shall file an objection that specifically sets forth its objection within five (5) days after the notice of proposed appointment.

If a hearing officer is so appointed, the hearing officer shall oversee the evidentiary hearing and shall establish such procedures as the hearing officer deems are necessary and which comport with the requirements of due process. At the conclusion of the hearing, the hearing officer shall submit to the COO and serve upon the Authority Contractor proposed findings of fact and a recommended decision. The Authority Contractor shall have seven (7) Days to submit to the COO comments on the hearing officer's findings.

8.6.4 Notice of Debarment

The COO will determine whether to debar the Authority Contractor. If a hearing officer was appointed, the COO shall not be bound by the hearing officer's recommendations, but rather may adopt, reject or modify such recommendation.

- (1) If the COO determines not to debar the Authority Contractor, he/she shall provide a written determination to the Authority Contractor stating that the Authority Contractor will not be debarred.
- (2) If the COO decides to debar the Authority Contractor, he/she shall prepare and provide to the Authority Contractor via certified mail a written Determination to Debar (DTD) stating (1) the Authority Contractor has been debarred as of the date of the determination; (2) the period of Debarment; (3) the reasons for the Debarment; and (4) the facts found by the COO. The DTD will also advise the Authority Contractor that it may, but is not required to, appeal the decision to the CEO by submitting a written appeal to the CEO within fifteen (15) Days of the date of the DTD which appeal shall fully set forth the Authority Contractor's basis for the appeal.
- (3) If the Authority Contractor does not submit an appeal within the fifteen (15) Day period set forth above, the Debarment is final.

8.7 APPEAL OF A DEBARMENT TO THE CEO

The appeal to the CEO shall fully set forth the Authority Contractor's basis for the appeal and all of the arguments that the Authority Contractor wants the CEO to consider. Unless the CEO determines otherwise, the review shall be based solely on the Authority Contractor's appeal and the record before the COO and the hearing officer, if one was appointed, and the Authority Contractor shall not have the right to introduce new evidence at this stage in the process.



The CEO shall endeavor to issue his or her decision within thirty (30) Days of the receipt of the Authority Contractor's appeal, but may extend such time period as determined necessary. The CEO shall notify the Authority Contractor if he or she does not expect to issue his or her decision within thirty (30) Days of receipt of the Authority Contractor's appeal.

8.8 CONSEQUENCES OF DEBARMENT OR SUSPENSION

Contractors that have been suspended or debarred by the Airports Authority are excluded from receiving Authority Contracts or subcontracts. Contracting Officers will not award Contracts to, or, when a Contract provides for such consent, consent to subcontracts with such persons or entities, unless the COO has approved the action as in the best interests of the Authority.

8.9 LISTS OF DEBARRED OR SUSPENDED PARTIES

The Procurement and Contracts Department will maintain a list of Authority Contractors suspended or debarred and the current period of suspension or Debarment. This information may be posted on the Airports Authority's website.



CHAPTER 9: PROTESTS

9.1 FILING PROTESTS

All protests must be addressed to the Vice President, OSCM. A protest must be sent by (i) registered or certified mail, return receipt requested; or (ii) nationally recognized delivery service which provides tracking records of at least the date sent and date received or hand delivered to the Airports Authority's Procurement and Contracts Department. Protests sent electronically will not be accepted.

9.2 TIME FOR SUBMITTING PROTESTS

Unless otherwise noted in a Solicitation, the following procedures shall apply.

9.2.1 Protest Based on Solicitation Terms

Protests that are based on the terms and conditions set forth in or omitted from a Solicitation or amendment must be received by the earlier of the following two dates: (i) fourteen (14) Days after the issuance date of the Solicitation or the date of the Solicitation amendment containing the terms or conditions that are the subject of the protest; or (ii) the due date set out in the Solicitation for submission of Offers.

9.2.2 Protest Based on Evaluation or Award

Protests that are based on the manner in which Offers were evaluated or on which a Contract was awarded may only be made by an Offeror who submitted an Offer and must be received no later than seven (7) Days after the Offeror knew or should have known of the basis for the protest.

Protesters are deemed to know the basis for the protest on the earliest applicable date of the following:

- (1) Public Bid opening;
- (2) Communication was made regarding notice of unsuccessful Offer;
- (3) Contract was recommended for approval to the Authority's Board; or
- (4) Contract award was posted publicly.

9.3 CONTENTS OF PROTEST

In order to be considered, a protest must: (i) include the name, address, telephone and e-mail address of the protester; (ii) identify the Solicitation number; (iii) demonstrate that the protester has a legitimate interest in the procurement; (iv) set forth the basis for the protest in specific detail, including a clear and specific description of the errors or violations of this Manual or other law that serve as the basis for the protest; (v) demonstrate the timeliness of the protest; and (vi) be signed by an individual authorized to file the protest on behalf of the protester.

Preemptive protests (i.e., those that are filed to give the protester the opportunity to determine whether a protest is warranted) may be denied by the Airports Authority.



9.3.1 Protest Bonds

At the Airports Authority's discretion, and with approval of the Vice President, OSCM and the Office of General Counsel a requirement for a protest bond may be included in an Authority Solicitation. The purpose of a protest bond is to discourage frivolous protests pertaining to award of a Contract resulting from a specific Solicitation. The Solicitation will state the specific requirements for the protest bond, including, but not limited to, the bond amount and format. Failure to submit a protest bond with a protest, when the requirement for the protest bond is noted in the Solicitation, will result in the protest being rejected by the Authority without any consideration of the merits of the protest.

9.4 NOTICE OF DECISION

9.4.1 Time for Review

The Vice President, OSCM will attempt to respond to a protest within seven (7) business Days from receipt of the protest. If he or she determines additional time will be required to respond to the protest, the Vice President, OSCM will, within this seven (7) business Day period, notify the protester of the date by which a response will be made.

9.4.2 Basis of Review

Protests will be reviewed based on the allegations and support included in the protest. Protests that do not contain a set of specific allegations will be denied as unsupported.

9.5 REVIEW OF DECISION

If a protester is not satisfied with the response of the Vice President, OSCM, the protester may ask the CEO to review the matter. This request must be received by the CEO no later than seven (7) business Days after the date of the Vice President, OSCM's response letter. If a protester is not satisfied with the decision of the CEO, and the Contract is or was subject to the approval of the Board, then the protester may request the protest be reviewed by the Board. Such a request must be filed with the Board Secretary and must be received by the Board Secretary no later than seven (7) business Days after the date of the CEO's response letter. The decision of the Board is final. For Contracts not subject to the approval of the Board, the decision of the CEO is final.

9.6 AWARD OF CONTRACT AND NOTICE TO PROCEED

If a Contract has not been awarded at the time a protest is timely filed, the Contract may not be awarded while the protest is pending, unless the CEO determines that the award of the Contract and, if applicable, issuance of a notice to proceed, is in the Authority's best interests.

9.7 SOLICITATIONS FUNDED BY THE FTA

For Solicitations funded by the FTA, see Section 10.7.31 of this Manual for additional guidance on special requirements and restrictions.



CHAPTER 10: FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

The FTA is one of ten modal administrations within the U.S. Department of Transportation (DOT) and provides grants and other types of financial assistance to public transportation agencies throughout the United States.

The FTA provides financial assistance to develop new public transportation systems and to improve, maintain, and operate existing systems. The FTA oversees thousands of Federally assisted projects to hundreds of state and local public transportation providers, primarily through its ten regional offices. Each recipient of FTA assistance is responsible for managing its programs and projects in compliance with applicable Federal requirements, including those applicable to procurements. The FTA is responsible for ensuring that recipients use that assistance prudently and in compliance with those requirements. While some of the requirements imposed on recipients in the area of procurements come from FTA's enabling legislation, other requirements come from government-wide Federal grant requirements that seek to ensure fair and economical procurements when Federal assistance is expended. (FTA C 4220.1F, Ch. I, paras. 1 and 4)

The Airports Authority is receiving FTA financial assistance for the Dulles Corridor Metrorail Project (Project). Chapter 10, therefore, is applicable to all procurements undertaken by the Airports Authority in connection with the Project and funded, in whole or in part, with FTA assistance.

The Airports Authority procurement requirements in this Manual apply to procurements conducted under this Chapter 10, except to the extent they conflict with requirements in this chapter, are expressly modified, replaced or superseded by provisions in this chapter, or are prohibited by FTA's requirements.

10.1 DEFINITIONS

The following terms shall be defined as stated for the purposes of Chapter 10. To the extent the definition of any term in this section conflicts with the term's definition elsewhere in this Manual, the definition in this section shall, for purposes of Chapter 10, control.

10.1.1 Advance Payments

Advance payments are payments made to a Contractor before the Contractor incurs Contract costs. [FTA C 4220.1F, Ch. IV, para. 2.b(5)(b)]

10.1.2 Best Practices Procurement Manual (BPPM)

The FTA's "Best Practices Procurement Manual" or "BPPM" provides suggested procedures, methods, and examples to advise a recipient how it might conduct its third party procurements in compliance with Federal laws and regulations and FTA Circular 4220.1F guidance. Although the BPPM can be a good resource for use in conducting FTA assisted procurements, it is not the source of any FTA or Federal requirements and, as such, is not binding on FTA recipients. [FTA C 4220.1F, Ch. I, para. 6.g]



10.1.3 Best Value

Best Value, as defined by the FTA, describes a competitive proposals procurement process in which the Airports Authority reserves the right to select the most advantageous Offer by evaluating and comparing factors in addition to cost or price (e.g., qualifications of the Offeror and its proposed personnel, and technical designs and approaches), such that the Airports Authority may acquire technical superiority even if it must pay a premium price. A “premium” is the difference between the price of the lowest priced proposal and the one that the Airports Authority believes Offers the best value. Best Value also means the expected outcome of an acquisition that, in the Airports Authority’s estimation, provides the greatest overall benefit in response to its material requirements. To achieve best value in the context of acquisitions for public transportation purposes, the evaluation factors for a specific procurement are to reflect the subject matter and the elements that are most important to the Airports Authority. While FTA does not mandate any specific evaluation factors, the Airports Authority will disclose those factors in its Solicitation. Evaluation factors may include, but are not limited to, qualifications of the Offeror and its proposed personnel, technical design, technical approach, length of delivery schedules, past performance, and management plan. This definition does not limit or dictate the qualitative measures that the Airports Authority may employ in a Best Value competitive proposals procurement, except that they must support the purposes of the Federal public transportation program. [FTA C 4220.1F, Ch. I, para. 5.b]

10.1.4 Cardinal Change

Cardinal Change means a major deviation from the original purpose of the work covered by a Contract 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. [FTA C 4220.1F, Ch. I, para. 5.c]

10.1.5 Common Grant Rule

Common Grant Rule refers to the U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” in 49 CFR Part 18, which apply to Federal grants and cooperative agreements made by the DOT to governmental recipients of Federal assistance. [FTA C 4220.1F, Ch. I, para. 5.e(1)]

10.1.6 FTA

FTA means the FTA. [FTA C 4220.1F, Ch. I, para. 5.m]

10.1.7 Federally Required Clauses

Solely because of the receipt of Federal funds by the Airports Authority, certain clauses containing Federal requirements are required to be included in Third Party Contracts (see Appendix C for Model Federal Clauses). The Airports Authority will include appropriate clauses in each Third Party Contract stating the Contractor’s responsibility under Federal law, regulation, or directive, including any necessary provisions requiring the Contractor to extend applicable Federal requirements to its subcontractors to the lowest tier necessary.

Many of the required clauses come directly from various sections of the Code of Federal Regulations (CFR) which are published by various executive departments of the Federal government. The most common clauses come from various parts of Title 49 of the CFR, published by the Department of Transportation. Requirements of the Department of Labor (such as Davis-



Bacon Act clauses) originate as specific language in Title 29 of the CFR. Where clauses are not mandated by an executive department, they are frequently modeled after clauses in the Federal Acquisition Regulations (FAR) which are applicable to those executive departments. [BPPM, Section 8.1.1]

10.1.8 Full and Open Competition

Full and Open Competition means that all responsible sources are permitted to compete. [FTA C 4220.1F, Ch. I, para. 5.n]

10.1.9 Local Government

Local Government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. This term does not include a local public institution of higher education. The Airports Authority is considered the recipient of FTA grants for the Dulles Corridor Rail Project. [FTA C 4220.1F, Ch. I, para. 5.s]

10.1.10 Master Agreement

Master Agreement means the FTA document incorporated by reference and made part of FTA's standard grant agreements and cooperative agreements that contains the standard terms and conditions governing the administration of a project supported with Federal assistance awarded by the FTA. The Airports Authority has executed an FTA Master Agreement in connection with the first phase of the Dulles Corridor Metrorail Project. [FTA C 4220.1F, Ch. I, para. 5.t]

10.1.11 Progress Payments

Progress Payments are payments for Contract work that has not been completed. [FTA C 4220.1F, Ch. IV, para. 2.b(5)(c)]

10.1.12 Recipient

Recipient means the public or private entity to which FTA awards Federal assistance through a grant, cooperative agreement, or other agreement. The Recipient is the entire legal entity even if only a particular component of the entity is designated in the document through which the FTA has awarded Federal assistance. The term includes "grantee," which is a "recipient" of Federal grant assistance. The Airports Authority is a Recipient by virtue of the FTA financial assistance it has received for the first phase of the Dulles Corridor Metrorail Project.

Recipient also includes any entity to which the Airports Authority has given, by grant or similar means, a portion of its FTA financial assistance. The Airports Authority is responsible for assuring that each such subrecipient complies with the applicable requirements and standards of FTA Circular 4220.1F (see Paragraph 10.2.1), and is aware of the Federal statutory and regulatory requirements that apply to its actions as a subrecipient.

Neither a party which Contracts with the Airports Authority, nor an entity which Contracts with that party is a Recipient for purposes of this Chapter or Circular 4220.1F. [FTA C 4220.1F, Ch. I, para. 5.z]



10.1.13 Revenue Contract

Revenue Contract means a Contract in which the Airports Authority or a subrecipient provides access to the Dulles Corridor Metrorail Project or other public transportation assets constructed with FTA financial assistance for the primary purpose of either producing revenues in connection with a public transportation related activity, or creating business opportunities involving the use of FTA assisted property. Airports Authority revenue Contracts (known as Concessions Contracts) are addressed in Chapter 6 of this Manual. [FTA C 4220.1F, Ch. I, para. 5.aa]

10.1.14 State or Local Government Purchasing Schedule or Purchasing Contract

State or Local Government Purchasing Schedule or Purchasing Contract means an arrangement that a State or Local Government has established with multiple vendors in which those vendors agree to provide essentially an option to the State or Local Government, and its subordinate government entities and others it might include in its programs, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the GSA's Cooperative Purchasing Program available for Federal Government use. [FTA C 4220.1F, Ch. I, para. 5.cc]

10.1.15 Third Party Contract

Third Party Contract refers to a Contract between the Airports Authority and a vendor or Contractor which is financed, in whole or in part, with Federal assistance awarded by the FTA, including procurements by purchase order or purchase by credit card; it does not include any subcontract between that vendor or Contractor and another party. [FTA C 4220.1F, Ch. I, para. 5.dd]

10.2 APPLICABILITY OF FEDERAL, STATE AND LOCAL PROCUREMENT LAWS, REGULATIONS AND GUIDANCE DOCUMENTS

10.2.1 FTA Circular 4220.1F

This Chapter 10 is based in substantial part on FTA Circular 4220.1F. This Circular provides suggested procedures, methods, and examples to advise Recipients and their subrecipients in complying with Federal laws and regulations that affect their FTA- assisted procurements. The FTA considers this Circular, in its entirety, to be a guidance document. While this guidance itself does not have the force and effect of Federal law or regulation, it does contain information about Federal laws and regulations which are mandatory when applicable.

As guidance, the Circular attempts to describe how a Recipient or subrecipient of FTA assistance can comply with those Federal laws and regulations that affect procurements. In some cases, the Circular describes the single method by which a Recipient or subrecipient can comply with a specific Federal statutory or regulatory mandatory requirement. In other cases, the Circular provides more flexibility. As guidance, this Circular also expresses FTA's preferences about how the procurements it supports should be undertaken. The Master Agreement reflects the agreement between the FTA and the Recipient that the Circular will apply to its Third Party Contracts. As a guidance document, the Circular does not waive any requirements of the Federal statutes or regulations it states and describes except as permitted by their terms.



Because the Circular is guidance, the FTA is willing to consider methods of compliance with Federal laws and regulations other than those described in the Circular. Prior to undertaking an alternative method of complying with any applicable Federal statute or regulation other than those described in the BPPM, the Airports Authority will, when feasible, contact the FTA before employing that method to ensure that the FTA agrees with the alternative proposed. While FTA's prior concurrence is not required, FTA reserves the right to decline to financially participate in the costs of Third Party Contracts that fail to comply with applicable Federal laws and regulations, or the terms of the Recipient's underlying grant or cooperative agreement. [FTA C 4220.1F, Ch. II, para. 1]

10.2.2 Scope of Circular 4220.1F

The Circular applies to Third Party Contracts and subcontracts issued by Recipients, and therefore by the Airports Authority, where FTA funding is involved. [FTA C 4220.1F, Ch. II, para. 2.a(1)(b)]

Airports Authority Contractors and subcontractors are not considered Recipients or subrecipients of FTA funding under the Circular. Consequently, Airports Authority Contractors and subcontractors are not directly covered by the Circular, or by the Common Grant Rule, or the FTA's "Best Practices Procurement Manual" (BPPM) in awarding their subcontracts. However, each Airports Authority Contractor is required to comply with the terms and requirements of its Contract with the Airports Authority, including the requirement to extend the applicable Federal Required Clauses to its subcontractors and to require each of those subcontractors to do the same to the lowest tier of subcontracts. For that reason, the Circular, the Common Grant Rule, and the BPPM provide useful information to a third party Contractor and third party subcontractor about the constraints applicable to a Recipient when entering into a Third Party Contract. [FTA C 4220.1F, Ch. II, para. 2.a(5)]

10.2.3 Federal Laws and Regulations

In addition to Circular 4220.1F, this Chapter 10 is based on Federal laws and regulations including, but not limited to, Federal transit laws at 49 U.S.C. Chapter 53, FTA regulations, and other Federal laws and regulations that contain requirements applicable to Recipients, and therefore the Airports Authority, and its FTA assisted procurements. These include the following Federal regulations. [FTA C 4220.1 F, Ch. II. Para. 3]

10.2.3.1 Common Grant Rule

The Common Grant Rule contains the most comprehensive Federal requirements applicable to Recipients, including the Airports Authority. [FTA C 4220.1F, Ch. II, para. 3.a(1)]

10.2.3.2 Federal Acquisition Regulation (FAR)

The FAR, 48 CFR Chapter 1, does not apply to Recipients, and therefore to the Airports Authority, or its Federally assisted procurements, absent Federal laws or regulations to the contrary. However, audits of Architectural and Engineering (A&E) services listed in 49 U.S.C. Section 5325, which are provided to Recipients, must be carried out under FAR Part 31 cost principles. [FTA C 4220.1F, Ch. II, para. 3.b]



10.2.3.3 Other Federal Requirements

Other Federal transit laws and implementing regulations not addressed in the Common Grant Rule, contain requirements that apply to Recipients, and therefore to the Airports Authority, as do other Federal cross cutting statutes and regulations that affect what a Recipient may acquire.

Citations to most of these Federal requirements are included in the latest edition of the Master Agreement, typically issued at the beginning of each Federal fiscal year, which includes comprehensive information about Federal laws and regulations that may apply to an FTA assisted project. Airports Authority Contracting Officers in FTA assisted procurements will review the Master Agreement when making procurement decisions. [FTA C 4220.1F, Ch. II, para. 3.c]

10.2.4 State and Local Laws and Regulations

The Airports Authority, as authorized by the Interstate Compact between the Commonwealth of Virginia and the District of Columbia creating the Airports Authority, has established its own procurement procedures, which are set out in this Manual. Procurement laws and regulations of the Commonwealth of Virginia and the District of Columbia are inapplicable to the Airports Authority. [FTA C 4220.1F, Ch. II, para. 4]

10.3 AIRPORTS AUTHORITY RESPONSIBILITIES

The following procurement-related responsibilities arise from the Common Grant Rule and other applicable Federal laws and regulations.

10.3.1 Written Standards of Conduct

The Airports Authority expects all employees and members of the Board to act in the best interests of the Airports Authority at all times and to not engage in conduct that is illegal, dishonest, or brings discredit upon the Airports Authority, or participate in any Airports Authority matter as to which the employee has a conflict of interests. In particular, employees who obligate the Airports Authority to spend money, approve payments, and make decisions affecting disbursements have a special duty to make their recommendations and decisions without prejudice, seeking to obtain the maximum value for the Airports Authority.

The Airports Authority's Code of Ethics for Employees and Code of Ethics for Members of the Board of Directors, as they may be amended from time to time, are available on the Airports Authority's website, www.mwaa.com, and are hereby incorporated into this Chapter 10 as if they were expressly set forth. [FTA C 4220.1F, Ch. III, para. 1]

10.3.2 Third Party Contracting Capacity

As part of its obligation to maintain adequate technical capacity to carry out its FTA-assisted projects and comply with the Common Grant Rule, the Airports Authority's third party Contracting capability is to be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Airports Authority also is to maintain a Contract administration system to ensure that it and its third party Contractors comply with the terms, conditions, and specifications of their Contracts or purchase orders and applicable Federal, state and local requirements. [FTA C 4220.1F, Ch. II, para. 3]



10.4 WRITTEN PROCUREMENT PROCEDURES

The Airports Authority is to maintain written procurement procedures as a condition of its self-certification that its procurement system complies with FTA requirements and that it has the technical capacity to comply with Federal procurement requirements. These procedures are set out below in Paragraphs 10.4.1 through 10.4.11, and elsewhere in Chapter 10, as supplemented by applicable provisions in this Manual. [FTA C 4220.1F, Ch. III, para. 3.a]

10.4.1 Specifications

Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured will be provided.

Nonrestrictive Specifications. In competitive procurements, the description will not contain features that unduly restrict competition and will not be exclusionary or discriminatory.

Quality Requirements. A description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy its intended use.

Preference for Performance Specifications. As provided in the Common Grant Rule, detailed product specifications will be avoided if at all possible and, whenever practicable, performance specifications will be utilized.

Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the material, product, or services to be acquired, a “brand name or equal” description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by Offerors of “an equal” proposal will be clearly stated. [FTA C 4220.1F, Ch. III, para. 3.a(1)]

10.4.2 Necessity

The Contracting Officer will ensure that the office requesting a procurement justifies its purchasing requirements in order to avoid the purchase of material, property, and services the office does not need (including duplicative items and quantities or options it does not intend to use or whose use is unlikely). In reviewing a given justification, the Contracting Officer will consider whether the office’s requirements reflect a reasonable expectation of requirements at the time a Contract will be entered.

- (1) **Unnecessary Reserves.** The Contracting Officer will ensure that the Airports Authority limits its acquisition of material, product, and services to the amount it needs to support the Dulles Corridor Metrorail Project or other FTA-assisted project.
- (2) **Acquisition for Assignment Purposes.** The Airports Authority will Contract only for its current and reasonably expected needs and may not add quantities or options to its Contracts solely to permit assignment to another party at a later date.

[FTA C 4220.1F, Ch. III, para. 3.a(2) and Ch. VI, para. 2.a(2)]



10.4.3 Lease Versus Purchase

To obtain the best value, the Contracting Officer will review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The Airports Authority may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the Airports Authority leases an asset, it will, as required by FTA regulations ("Capital Leases," 49 CFR Part 639, Subpart C), undertake a written comparison of the cost of leasing the asset and the cost of purchasing or constructing the asset and will ensure that the comparison utilizes costs that are reasonable, based on realistic current market conditions and on the expected useful service life of the asset. [FTA C 4220.1F, Ch. III, para. 3.a(3) and Ch. IV, para. 1.e]

10.4.4 Metric Usage

The Airports Authority will accept material, products, and services with dimensions expressed in metric measurements, to the extent practicable and feasible. [FTA C 4220.1F, Ch. III, para. 3.a(4)]

10.4.5 Environmental and Energy Efficiency Preferences

The Airports Authority will comply with applicable Federal environmental requirements and implement them as necessary through Third Party Contracts. The Contracting Officer will include the applicable Contract provisions in Appendix C to facilitate compliance with environmental mitigation measures it has agreed to implement. [FTA C 4220.1F, Ch. III, para. 3.a(5)]

10.4.6 Procurement Methods

In undertaking procurements that are subject to this Chapter 10, the Airports Authority will utilize the following procurement methods.

10.4.6.1 Micro-Purchases

The Airports Authority may acquire property and services valued at or below the Federal micro-purchase limit without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, apply to construction Contracts exceeding \$2,000, even when using micro-purchase procurement procedures. The Contracting Officer will distribute micro-purchases equitably among qualified suppliers and will not divide or reduce the size of a procurement merely to come within the micro-purchase limit. The only documentation required for a micro-purchase is the determination that the price is fair and reasonable and the description of how that determination was made. [FTA C 4220.1F, Ch. VI, para. 3.a]

10.4.6.2 Small Purchases

Small purchases are purchases valued at more than the micro-purchase threshold but less than the Federal simplified acquisition threshold. The Airports Authority will use relatively simple and informal procedures to make small purchases, but these procedures will require the Contracting Officer to obtain price or rate quotations from an adequate number of qualified sources and provide documentation that the price is fair and reasonable. The Contracting Officer may not divide or reduce the size of the procurement to avoid the additional procurement requirements applicable to larger acquisitions. The Airports Authority small-purchase procedures are set out in the Airport Purchasing Policies and Procedures Manual referenced in Paragraph 2.12 of this Manual. Small purchases are exempt from FTA's Buy America requirements. [FTA C 4220.1F, Ch. VI, para. 3.b]



10.4.6.3 Sealed Bids (Formal Advertising: Invitation for Bids)

A preference is stated in the Common Grant Rule for the sealed Bids procurement method for acquiring property, construction, and other services. Procurement using sealed Bids will be used when all of the following circumstances are present:

- (1) A complete, adequate, precise, and realistic specification or purchase description is available for the procurement.
- (2) Two or more responsible Bidders are willing and able to compete effectively for the business.
- (3) The procurement generally lends itself to a firm fixed price Contract.
- (4) The risk of unsuccessful Contract performance is minimal and successful execution of the project is not highly dependent upon the successful Bidder's quality of proposed personnel, past performance, management plan, or technical approaches.
- (5) The successful Bidder can be selected on the basis of price and the price-related factors listed in the Solicitation, which may include transportation costs, life cycle costs, and discounts expected to be taken. (When this procurement method is utilized, 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.)
- (6) Discussions with one or more Bidders after Bids have been submitted are expected to be unnecessary as award of the Contract will be made based on price and price-related factors alone. (When this procurement method is utilized, a pre-Bid conference with prospective Bidders before Bids have been received may be used.)

The procurement procedures applicable to sealed Bids procurements in Chapter 3 of this Manual will apply to sealed Bids procurements under this Chapter 10, and those procedures will be supplemented by the following provisions; provided, that, to the extent there is a conflict between any of the following provisions and the procedures in Chapter 3, the following provisions will control:

- (1) The Invitation for Bids will be publicly advertised.
- (2) Bids will be solicited from an adequate number of known suppliers.
- (3) The Invitation for Bids, including any specifications and pertinent attachments, will describe the property or services sought in sufficient detail that a prospective Bidder will be able to submit a proper Bid.
- (4) Bidders will be allowed sufficient time to prepare Bids before the date of Bid opening.
- (5) All Bids will be publicly opened at the time and place prescribed in the Invitation for Bids.
- (6) A firm fixed price Contract will be awarded in writing to the lowest responsive and responsible Bidder, but a fixed price incentive Contract or inclusion of an economic price adjustment provision may sometimes be appropriate. When specified in the Bidding documents, factors such as transportation costs and life cycle costs may affect the determination of the lowest Bid. Payment discounts will be used to determine the low Bid only when prior experience indicates that such discounts are typically taken.



(7) Any or all Bids may be rejected if there is a sound, documented business reason.

[FTA C 4220.1F, Ch. VI, para. 3.c]

10.4.6.4 Competitive Proposals (Request for Proposals: Negotiated Procurements)

The Common Grant Rule allows the use of competitive proposals when the nature of the procurement does not lend itself to sealed Bidding and the procuring entity expects that more than one source will be willing and able to submit an Offer or proposal. Generally, the Airports Authority will utilize this procurement method when any of the following circumstances are present:

- (1) **Type of Specifications.** The material, products, 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.
- (2) **Uncertain Number of Sources.** Uncertainty exists about whether more than one Bid will be submitted in response to an Invitation for Bids and the Airports Authority lacks the ability under this Manual to negotiate the Contract price were it to receive only a single Bid.
- (3) **Price Alone Not Determinative.** Due to the nature of the procurement, Contract award need not be based exclusively on price or price-related factors. In different types of competitive proposal procurements, the relative importance of cost or price may vary. When the Airports Authority's material requirements are clearly definable and the risk of unsuccessful Contract performance is minimal, cost or price may play a dominant role in source selection. However, the less definitive the requirements, the more development work required, or the greater the performance risk, the more technical and past performance considerations may play a dominant role in source selection and supersede low price.
- (4) **Discussions Expected.** Separate discussions with individual Offeror(s) are expected to be necessary after proposals have been submitted.

The procurement procedures applicable to competitive proposal procurements in Chapter 3 of this Manual will apply to competitive proposal procurements under this Chapter 10, and those procedures in Chapter 3 will be supplemented by the following provisions; provided, that, in the event there is a conflict between any of the following provisions and the procedures in Chapter 3, the following provisions will control:

- (1) **Publicity.** The Request for Proposals will be publicly advertised.
- (2) **Evaluation Factors.** All evaluation factors and their relative importance will be specified in the Solicitation, and numerical or percentage ratings or weights may but need not be disclosed.
- (3) **Adequate Sources.** Proposals will be solicited from an adequate number of qualified sources.



- (4) Evaluation Method. A specific method will be established and used to conduct evaluations of the technical proposals and, when applicable, of the qualifications of the Offerors and their proposed personnel, and to determine the most qualified Offeror.
- (5) Price and Other Factors. An award will be made to the responsible Offeror whose proposal is most advantageous to the Airports Authority's program with price and other factors considered.
- (6) Best Value. An award may be made to the Offeror whose proposal provides the greatest value to the Airports Authority. (See definition of Best Value.) In this case, the Solicitation must inform potential Offerors that the award will be made on a "Best Value" basis and identify the evaluation factors that will form the basis for award. The evaluation factors for a specific procurement will reflect the subject matter and the elements of the procurement that are most important to the Airports Authority. Those evaluation factors may include, but are not limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The determination of which proposal represents the "Best Value" will be based on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

[FTA C 4220.1F, Ch. VI, para. 3.d]

10.4.6.5 Two-Step Procurement Procedures

The FTA guidelines provide for the use of a two-step procurement procedure in connection with the sealed Bids and competitive proposals procurement methods, the construction component of the design-Bid-build procurement method (see Paragraph 10.4.6.7. below) and the design-build procurement method when construction costs are predominant (see Paragraph 10.4.6.8. below), provided the opportunity for Full and Open Competition is retained.

The Airports Authority has authority to use the two-step procurement processes identified in Paragraph 2.7.5 of this Manual, "Design-Build Contracts," and Paragraph 2.8.5, "Two-Step Advertised Sealed Bids." These processes are compliant with the FTA Guidelines on two-step procurement procedures. [FTA C 4220.1F, Ch. VI, para. 3.e]

10.4.6.6 Architectural and Engineering (A & E) Services

Federal law requires Recipients to use qualifications-based procurement procedures contained in the "Brooks Act" to acquire architectural and engineering (A & E) services and, in addition, program management, construction management, preliminary engineering, design, architectural, engineering, surveying, mapping and related services, as well as feasibility studies. It is the nature of the work to be performed and its relationship to construction, not the nature of the prospective Contractor, that determines whether qualifications-based procurement procedures are to be used. Services that are directly in support of, directly connected to, directly related to, or lead directly to the construction, alteration or repair of real property are to be acquired through qualifications-based procedures; all other services are not to be acquired through such procedures.

Qualifications-Based Procurement Procedures Required and Prohibited. The Airports Authority will use qualifications-based procurement procedures when acquiring not only A&E services, but also other services that are directly in support of, directly connected or related to, or lead directly to



construction, alteration, or repair of real property. Unless the FTA determines otherwise in writing, the Airports Authority will not use qualifications-based procurement procedures to acquire any other types of services and will not utilize any Contractor for such other types of services who has been selected through qualifications-based procurement procedures. Whether or not qualifications-based procurement procedures will, or will not, be used in the acquisition of services on, or related to, a construction project depends on the actual services to be performed and their connection with the project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in a construction project are not services for which qualifications-based procurement procedures may be used. Nor are services involving the actual construction of, alteration or repair of real property.

Qualifications-Based Procurement Procedures. The qualifications-based procurement procedures set out in Paragraph 2.6 of this Manual will apply to the procurement of services under this Paragraph 10.4.6.6, and those procedures will be supplemented by the following provisions; provided, that, in the event there is a conflict between any of the following provisions and a provision in Paragraphs 2.6, the following provisions will control:

- (1) Only an Offeror's qualifications to provide the services will be evaluated to determine the basis of ranking firms for taking the next step of price negotiations.
- (2) Price will be excluded as an evaluation factor.
- (3) Negotiations regarding price will first be conducted with the most qualified Offeror. Only after failing to agree on a fair and reasonable price with that Offeror may negotiations be conducted with the next most qualified Offeror. Once negotiations are terminated with a firm, they cannot be re-opened with that firm.
- (4) Serial Price Negotiations. If necessary, negotiations with successive Offerors in descending order may be conducted until Contract award can be made to the Offeror whose price the recipient believes is fair and reasonable.

Audits and Indirect Costs. The following Federal requirements apply to any Third Party Contract that is subject to this Paragraph 10.4.6.6:

- (1) The Contract or subcontract must be performed and audited in compliance with cost principles in FAR Part 31.
- (2) The Airports Authority and the Contractor, its subcontractors and subrecipients, if any, will accept FAR indirect cost rates for one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.
- (3) After a firm's indirect cost rates established as described in subparagraph (2) above are accepted, those rates will apply for purposes of Contract estimation, negotiation, administration, reporting, and payments.
- (4) Before requesting or using cost or rate data described in subparagraph (2) above, the Airports Authority will notify the affected firm. Those data are to be kept confidential, and are not to be provided, by the group of agencies that share cost data, except by written



permission of the audited firm. Moreover, if prohibited by law, the data may not be disclosed under any circumstances. Before requesting or using such data, the Airports Authority will notify the affected firm. It will also obtain the firm's permission before it provides the data in response to a valid request under the Airports Authority's Freedom of Information (FOI) Policy. The confidentiality requirements of 49 U.S.C. 5325(b)(3)(D) cannot be waived, even if they conflict with State law or regulations.

[FTA C 4220.1F, Ch. VI, para. 3.f]

10.4.6.7 Design-Bid-Build

The design-Bid-build procurement method requires separate Contracts for design services and for construction. Under this procurement method:

- (1) For design services, the Airports Authority will use qualifications-based procurement procedures, as provided in Paragraph 10.4.6.6.
- (2) For construction, the Airports Authority will not use qualifications-based procurement procedures and instead will generally use competitive procedures which include the sealed Bid or competitive proposal procurement methods set out above in Paragraphs 10.4.6.3 and 10.4.6.4, respectively, as well as the two-step procurement method set out in Paragraph 10.4.6.5.

[FTA C 4220.1F, Ch. VI, para. 3.g]

10.4.6.8 Design-Build

The design-build procurement method consists of Contracting for design services and construction simultaneously with Contract award to a single Contractor (e.g., a corporation, limited liability company, consortium, or joint venture) that will be responsible both for the project's design and for its construction. In utilizing this procurement method in connection with projects to which this Chapter 10 applies, the Airports Authority will comply with the following requirements.

First, the Airports Authority will separate the various Contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total costs of the activities placed in each of the two categories.

Second, the Airports Authority will compare the estimated costs in each category.

- (1) If construction costs are predominant, unless FTA determines otherwise in writing, the Airports Authority will not use the qualifications-based procurement method to acquire any of the Contract activities in the design category (e.g., architectural engineering, program management, construction management, preliminary engineering or design, architectural and engineering services) but will use a procurement method that is applicable to construction (see, e.g., Paragraph 10.4.6.7.(2)) for the acquisition of all design and construction Contract activities.
- (2) In the less usual circumstance where the cost of Contract activities in the design category are predominant, the Airports Authority will use the qualifications-based procurement method in Paragraph 10.4.6.6 for the acquisition of all design and construction Contract activities.



Paragraph 2.7.5 of this Manual provides for the use of a two-step design-build procurement method. The procurement procedures applicable to this procurement method in Paragraphs 2.7.5 and 2.2.11 will apply to design-build procurements under this Chapter 10. [FTA C 4220.1F, Ch. VI, para. 3.h]

10.4.6.9 Other Than Full and Open Competition

Normally, the Airports Authority will provide for Full and Open Competition when engaging in procurements to which this Chapter 10 applies. However, under certain circumstances, the Airports Authority may conduct such procurements without providing for such competition.

When Appropriate. The Airports Authority may procure with Other Than Full and Open Competition when a procurement is inappropriate for the use of small purchases, sealed Bid, or competitive proposal procurement methods, and at least one of the following circumstances is present:

- (1) **Competition Adequate.** Upon receiving a single Bid or proposal in response to a Solicitation, the Contracting Officer will determine whether competition was adequate. This will include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a Bid or proposal. The Contracting Officer will also review the specifications for changes that may be made to encourage submission of more Bids or proposals. If the Contracting Officer determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the Contracting Officer may determine the competition adequate, in which case a Contract may be awarded to the firm submitting the single Bid or proposal. Also in this case, a cost analysis will be performed in lieu of a price analysis.

The FTA regulations acknowledge that competition is adequate when the reasons for few responses are caused by conditions beyond the Recipient's control. If the competition can be determined adequate, FTA's competition requirements will be fulfilled. At the same time, the FTA regulations recognize that competition may be inadequate due to conditions within the Recipient's control, such as when specifications are unduly restrictive.

- (2) **Sole Source.** When the Airports Authority requires supplies or services that are available from only one responsible source, and no other supplies or services will satisfy its requirements, the Contracting Officer may make a sole source award. This may also occur when the Airports Authority needs to make a change to an existing Contract that is beyond the scope of the Contract in order to obtain supplies or services that are available only from that Contractor.

In applying this paragraph (2), supplies or services will be considered to be available only from one source if any of the following conditions is present:

- (a) **Unique or Innovative Concept.** The source of the supplies or services 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 the concept, approach or method is available to the Airports Authority only from one source and has not in the past been available to the Airports Authority from another source.



- (b) Patents or Restricted Data Rights. Patent, intellectual property or data rights restrictions preclude competition.
- (c) In the case of a follow-on Contract for the continued development or production of highly specialized equipment or major components thereof, it is likely that an award to another source would result in substantial duplication of costs that are not expected to be recovered through competition, or in unacceptable delays in fulfilling the Airports Authority's needs.
- (3) Unusual and Compelling Urgency. The Airports Authority may limit the number of sources from which it solicits Bids or proposals (i) when it has such an unusual and urgent need for the supplies or services in that it would be seriously injured unless it limited the Solicitation or (ii) when a public exigency or emergency exists that will not permit the delay in obtaining the supplies or services that will result from a fully competitive Solicitation.
- (4) Authorized by FTA. The Common Grant Rule provides Federal agencies authority to permit Recipients to use other than full and open competition procurements. Under this authority, the FTA has authorized Recipients, including the Airports Authority, to use other than full and open competitive procurements in the following circumstances:
 - (a) To comply with Department of Transportation (DOT) appropriations laws which include specific statutory requirements, with the result that only a single Contractor can perform certain project work.
 - (b) To maintain the availability of a facility, producer, manufacturer, or other supplier to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.
 - (c) To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
 - (d) When competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or is prohibited by the written directions of a foreign government reimbursing the Airports Authority for the cost of the acquisition of the supplies or services for that government.
 - (e) When the disclosure of the Airports Authority's needs would compromise national security.
 - (f) When the Airports Authority determines that Full and Open Competition in connection with a particular procurement is not in the public interest.

When Prohibited. Other than full and open competition is not justified based on:

- (1) The Airports Authority's lack of advance planning; or
- (2) Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (e.g., expiration of Federal assistance previously available for award).



Procurement Procedures. When other than full and open competition is available, the Airports Authority will:

- (1) Solicit Offers from as many potential sources as is practicable under the circumstances.
- (2) If the Contracting Officer decides to solicit an Offer from only one source, the decision will be adequately justified in writing.
- (3) The Contracting Officer will prepare or obtain a cost analysis verifying the cost data proposed by the source and the projections of the data, and evaluating the source's costs and profits.
- (4) The Contracting Officer will submit the proposed procurement to FTA for pre-award review if FTA so requests.

[FTA C 4220.1F, Ch. VI, para. 3.i]

10.4.7 Adequate Third Party Contract Provisions

The Common Grant Rule requires that all Third Party Contracts include provisions adequate to form a sound and complete agreement. Compliance with Federal laws and regulations necessarily requires the addition of many other provisions to ensure compliance with those laws and regulations. Specific Federal Contract provisions, directed at those laws and regulations, are required for each Contract, as well as a provision requiring that the Contractor extend the requirements of those laws and regulations to its subcontractors to the extent required. A matrix of clauses required in FTA-assisted Third Party Contracts is set out in Appendix C. Contracting Officers will use the matrix to identify required clauses and use the suggested or mandatory clause language in Appendix C. [FTA C 4220.1F, Ch. III, para. 3.b]

10.4.8 Sources

The Airports Authority is authorized to use many sources from which to acquire property and services whose procurement is subject to this Chapter 10 as described below:

10.4.8.1 Force Account

"Force account" means the Airports Authority's own labor forces and equipment. The use of force account labor is a project management function, rather than a procurement and Contract administration function. [FTA C 4220.1F, Ch. V, para. 1]

10.4.8.2 Shared Use

The Common Grant Rule encourages Recipients and subrecipients to enter into agreements for shared use of property and services. [FTA C 4220.1F, Ch. V, para. 2]

10.4.8.3 Joint Procurements

The FTA uses the term "joint procurement" to mean a method of Contracting in which two or more purchasers agree from the outset to use a single Solicitation document and enter into a single Contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. The FTA encourages Recipients to procure property and services jointly with other Recipients or others to obtain better pricing through larger purchases. When obtaining goods or services in this manner, the Airports Authority will ensure compliance



with all applicable FTA and Federal requirements and include all required clauses and certifications in the joint Solicitation and Contract documents. [FTA C 4220.1F, Ch. V, para. 3]

10.4.8.4 State or Local Government

Purchasing Schedules or Purchasing Contracts. The FTA encourages Recipients to use State and Local Governmental Purchasing Schedules and Purchasing Contracts (defined in Paragraph 10.1.14) for procurements of property or services. When obtaining property or services in this manner, the Airports Authority will ensure that all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed and included, whether in the master intergovernmental Contract or in the Airports Authority's purchase documents. [FTA C 4220.1F, Ch. V, para. 4]

10.4.8.5 Federal Excess and Surplus Property

The Common Grant Rule encourages Recipients to use Federal excess and surplus property managed by the General Services Administration when feasible and economical rather than procuring new property. [FTA C 4220.1F, Ch. V, para. 5]

10.4.8.6 Federal Supply Schedules

Recipients must be specifically authorized by Federal law before they may use a General Services Administration Federal Supply Schedule. Federal laws authorize state and Local Governments, including the Airports Authority, to use Federal Supply Schedules to acquire information technology (IT) and to purchase products and services to facilitate recovery from a major disaster. When using GSA schedules to acquire property or services in this manner, the Airports Authority will ensure that all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed and included, whether in the master intergovernmental Contract or in the Airports Authority's purchase documents. When using GSA schedules to acquire property or services, the Contracting Officer will seek Offers from at least three sources, will consider whether the GSA price is reasonable and may seek a lower price than that published on the GSA schedules. [FTA C 4220.1F, Ch. V, para. 6]

10.4.8.7 Existing Contracts

For purposes of this section, an "existing Contract" means a Contract that, when formed, was intended to be limited to the original parties thereto.

Permissible Actions. The Airports Authority may use existing Contract rights held by another Recipient, and may assign excess Contract rights in its own Contracts to another Recipient in the following circumstances:

- (1) Exercise of Options Held by Other Recipients. The Airports Authority may use Contract options held by another Recipient with the following limitations:
 - (a) Consistency with the Underlying Contract. The Contracting Officer will 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.
 - (b) Price. The Contracting Officer will not use an option held by another Recipient unless it has been determined, by price analysis, that the option price is more



advantageous than prices available in the market, or that the option, when exercised, is more advantageous than procuring on the open market.

(2) Exercise of Options Held by Airports Authority:

(a) Treated as Sole Source Procurements in Certain Circumstances.

When an Airports Authority Contract has one or more options and those options were not evaluated as part of the original Contract award, exercising those options after Contract award will result in a sole source award.

Similarly, exercising an option after the Contracting Officer has negotiated a lower or higher price for the option period or quantity will also result in a sole source award unless that price can be reasonably determined from the terms of the original Contract, or results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates.

(b) Price. The Contracting Officer will not use an option held by the Airports Authority unless it has been determined, by price analysis, that the option price is more advantageous than prices available in the market, or that the option, when exercised, is more advantageous than procuring on the open market.

(3) Assignment of Contract Rights (Piggybacking).

(a) Assignment by Airports Authority. The Airports Authority is expected 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. Thus, the Contracting Officer will document the Contract file justifying the quantities procured, and when property or services are solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) Contract, the Solicitation and the Contract will contain both a minimum and maximum quantity that represent the Airports Authority's reasonably foreseeable needs.

However, when the Airports Authority finds that it has inadvertently acquired Contract rights in excess of its needs, it may assign those Contract rights to other Recipients 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.

(b) Assignment to Airports Authority. Although FTA does not encourage the practice, the Airports Authority may acquire Contract rights through assignment by another Recipient. For this to occur, the Contracting Officer will (i) determine that the Contract price remains fair and reasonable and the Contract provisions are adequate for compliance with all Federal requirements (ii) ensure the Contractor's compliance with FTA's Buy America requirements and execution of Buy America certifications, and (iii) ensure that the quantities acquired to date under the Contract, together with the quantities sought by the Airports Authority do not exceed the quantities of the original Contract.



- (c) Alternatives to Assignment of Contract Rights. The Airports Authority recognizes that since assignments limit its choices to specific property and services acquired to meet another Recipient's particular needs, it may be more desirable to use intergovernmental procurements or joint procurements to obtain better pricing.

Impermissible Actions. The following actions are not permitted in conjunction with Contracts to which this Chapter 10 applies:

- (1) Improper Contract Expansion. The Airports Authority may not improperly expand a Contract. This occurs when a Contract includes a larger scope, greater quantities, or options beyond the Airports Authority's reasonably anticipated needs. It also occurs when a Contract includes excess capacity which has been added primarily to permit assignment of the excess rights to another entity. The Airports Authority may not enter into a Contract for quantities that it does not itself need.
- (2) Cardinal Changes. The Airports Authority may not make any cardinal changes to a Contract.

[FTA C 4220.1F, Ch. V, para. 7]

10.4.8.8 The Open Market

The Airports Authority will acquire most of the property and services it needs through procurements in the open market. [FTA C 4220.1F, Ch. V, para. 8]

10.4.9 Resolution of Third Party Contract Issues

10.4.9.1 Protests

The protest procedures in Chapter 9 of this Manual will govern procurement protests to which this Chapter 10 applies and are supplemented by the following provisions.

The Airports Authority's Role and Responsibilities. The Airports Authority will provide the following information to the FTA in the event of a protest:

- (1) Timely Notification. The Airports Authority will notify the FTA when it receives a protest and will keep the FTA informed about the status of all filed protests. The following information will be provided to the FTA Regional Administrator:
 - (a) A list of filed protests in procurements that:
 - Have a value exceeding \$100,000, or
 - Involve a controversial matter, irrespective of amount, or
 - Involve a highly publicized matter, irrespective of amount.
 - (b) The following information about each protest:
 - A brief description of the protest,
 - The basis of disagreement, and
 - If open, how far the protest has proceeded or, if resolved, the agreement or decision reached, and
 - Whether an appeal has been taken or is likely to be taken.



- (c) The Airports Authority will provide this information in its quarterly Milestone Progress Reports, and at its next Project Management Oversight reviews, if any and generally will keep the FTA project manager informed about protests.
 - (d) The Airports Authority will also provide notice of any decision to deny a protest.
- (2) Additional Information. The Airports Authority will disclose information about any protest that is requested by FTA to and will provide any documentation requested.

FTA Role and Responsibilities. The FTA has developed an appeals process for reviewing a Recipient's decision in procurement protests.

- (1) Only an "interested party" qualifies for FTA review of its appeal. An "interested party" is a party that is an actual or prospective Bidder or Offeror whose direct economic interest would be affected by the award or failure to award the Third Party Contract at issue. A subcontractor does not qualify as an "interested party."
- (2) The protester must exhaust its administrative remedies by pursuing the protest procedures in Chapter 9 of this Manual to completion before appealing an Airports Authority decision to the FTA.
- (3) The protester must deliver its appeal to the FTA Regional Administrator within five (5) working Days of the date on when the protester has received actual or constructive notice of the Airports Authority's final decision in its protest or must identify other grounds for appeal, such as the Airports Authority's failure to comply with its protest procedures or its refusal to review the protest.
- (4) The FTA will limit its review of protest appeals to:
 - (a) Whether the Airports Authority has failed to comply with its protest procedures or has refused to review the protest when presented with an opportunity to do so; and
 - (b) At the discretion of the FTA, whether the Airports Authority, in the course of the procurement, has violated a Federal law or regulation.

[FTA C 4220.1F, Ch. VII, para. 1]

10.4.9.2 Changes and Modifications

The Contracting Officer is responsible for issuing, evaluating and making necessary decisions involving changes to Airports Authority Contracts, and for preparing and executing change orders or modifications issued in accordance with the Changes Provision in Airports Authority Contracts. The Contracting Officer is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change.

The Contracting Officer must have written cost justifications supporting any change order and have the proposed change approved before it is issued. To be eligible for FTA assistance, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. [FTA C 4220.1F, Ch. VII, para. 2]



10.4.9.3 Disputes

The Airports Authority Role and Responsibilities. The Airports Authority is responsible for evaluating and resolving Third Party Contract disputes. The disputes procedures in Chapter 7 of this Manual will apply to disputes arising under Contracts awarded pursuant to this Chapter 10. In order for payments made to a third party Contractor to settle a dispute to be eligible for Federal assistance, the Airports Authority will take the following actions:

- (1) Notify FTA about Disputes. The Airports Authority will notify the FTA when it receives a Third Party Contract dispute, and keep the FTA informed about the status of the dispute. The following information will be provided:
 - (a) A list of actual and potential disputes involving Third Party Contracts that:
 - Have a value exceeding \$100,000,
 - Involve a controversial matter, irrespective of amount, or
 - Involve a highly publicized matter, irrespective of amount.
 - (b) The following information about each dispute:
 - A brief description of the dispute,
 - The basis of disagreement, and
 - If open, how far the dispute has proceeded or, if resolved, the agreement or decision reached.
 - (c) The Airports Authority will provide this information in quarterly Milestone Progress Reports, and at its Project Management Oversight reviews, if any.
 - (d) The Airports Authority will also endeavor to keep its FTA project manager informed about disputes with which it is involved.
- (2) Documentation of Disputes. The Contracting Officer will include adequate documentation in the project files of the facts, events, negotiations, applicable laws related to a dispute, as well as a legal evaluation of the likelihood of success in any potential litigation involving the dispute, as may be needed to justify FTA's concurrence in any compromise or settlement of the dispute, should FTA concurrence become necessary.
- (3) Audit. Since an audit may help the Airports Authority demonstrate that the costs incurred in settling a dispute are necessary, reasonable, adequately documented, and appropriate for FTA support, it will consider conducting or obtaining an audit before settling large Contract disputes. Any such audit will be conducted in accordance with "Generally Accepted Auditing Standards" as defined by the American Institute of Certified Public Accountants.

FTA Role and Responsibilities. In light of its financial interest in the settlement of disputes involving Third Party Contracts, the FTA retains the following rights:

- (1) The FTA may review the reasonableness of a negotiated settlement to determine the extent of its participation in the costs of the settlement.
- (2) The FTA may review the Airports Authority's files and history pertaining to the dispute or experience under a particular grant or cooperative agreement.



If the Airports Authority has already disbursed Federal funds to settle a Contract dispute which is determined to be ineligible for FTA assistance, the Airports Authority will return those funds to the FTA, unless the FTA determines otherwise. The FTA reserves the right to defer financial participation in settlement costs until it receives an adequate audit. [FTA C 4220.1F, Ch. VII, para. 3]

10.4.9.4 Claims and Litigation

The Airports Authority Role and Responsibilities. The Airports Authority will evaluate and attempt to reach a reasonable resolution of claims and litigation arising from a Contractor's violation, default, or breach of a Third Party Contract. The Airports Authority will also evaluate and attempt to reach a reasonable resolution of claims a Contractor may present against it and related litigation. The Airports Authority will use the procedures in Chapter 7 of this Manual in addressing claims and litigation arising from Third Party Contracts awarded pursuant to this Chapter 10, and, in addition, will take the following actions.

- (1) The Airports Authority will provide the following information to the FTA in connection with claims and litigation:
 - (a) A list of claims and litigation involving Third- Party Contracts and Potential Third-Party Contracts that:
 - Have a value exceeding \$100,000,
 - Involve a controversial matter, irrespective of amount, or
 - Involve a highly publicized matter, irrespective of amount.
 - (b) The following information about each claim or lawsuit:
 - A brief description of the claim or lawsuit,
 - The basis of disagreement,
 - If open, how far the claim or litigation has proceeded or, if resolved, the decision or agreement reached, and whether an appeal has been or is likely to be taken.
 - (c) The Airports Authority will provide this information in its quarterly Milestone Progress Reports, and at its Project Management Oversight reviews, if any, and will also keep its FTA project manager informed about claims and lawsuits with which it is involved.
- (2) In resolving Third Party Contract claims, the Airports Authority will take reasonable measures to pursue its rights and remedies available under the Contract and law, including settlement, particularly if failure to do so would jeopardize the Federal interest in the project or cause the Airports Authority to seek additional Federal assistance.

FTA Role and Responsibilities. In light of its financial interest in claims and litigation involving Third-Party Contracts, the FTA retains the following rights:

- (1) The FTA retains a right to a share of any net proceeds recovered by the Airports Authority through the settlement or other resolution of a claim or lawsuit in proportion to the amount the FTA has committed to the project, unless the FTA permits other uses of the proceeds.
- (2) Where the Airports Authority has recovered liquidated damages under a liquidated damages Contract provision, the FTA retains the right to have the Airports Authority credit



the recovered damages to the Federally-assisted project, unless the FTA permits other uses of the damages.

[FTA C 420.1F, Ch. VII, para. 4]

10.4.9.5 FTA Participation in Settlements, Arbitration Awards, and Court Awards

The Airports Authority's Role and Responsibilities:

- (1) The FTA recognizes that a settlement of Third Party Contract claims may require the Airports Authority to relinquish its rights to amounts it would otherwise be due under the Contract, including amounts for liquidated damages and other matters, were it to prevail on all matters at issue. Nonetheless, the FTA expects the Airports Authority to enter into a settlement only if it can demonstrate the terms of the settlement to be reasonable.
- (2) To justify the FTA's participation in settlements, arbitration awards, or court awards, the Airports Authority's records must be sufficient to demonstrate that it has taken reasonable and prudent measures to prevent or offset the actions or circumstances that had resulted in the underlying dispute, claim, or litigation.
- (3) The Airports Authority will secure FTA's review and written concurrence of any proposed settlement, or of any arbitration or court award before using Federal assistance to support the costs of the settlement or award, if one of the following circumstances is present:
 - (a) When the settlement or award exceeds \$100,000.
 - (b) When the approved project lacks sufficient funds to cover the settlement costs.
 - (c) When a special Federal interest or Federal concern is declared due to program management concerns, possible mismanagement, impropriety, waste, or fraud.

FTA Role and Responsibilities:

- (1) The FTA reserves the right to review the Airports Authority's supporting documentation of the settlement or award.
- (2) If FTA assistance is available, the FTA may provide a prorated share of any eligible costs that result from the settlement or award so long as the underlying dispute or claim was not caused by the Airports Authority's mismanagement and is attributable to the Contractor, and the costs are otherwise properly incurred.
- (3) Costs incurred in connection with the settlement or award that are the result of the Airports Authority's negligence or error are usually ineligible for FTA participation. The FTA reserves the right to determine the extent to which FTA assistance may be used for any such settlement or award.

[FTA C 4220.1F, Ch. VII, para. 5]

10.4.10 Determining the Airports Authority's Needs

In undertaking procurements under this Chapter 10, the Airports Authority will document that the procurement addresses only its minimum needs. The documentation containing the basis or justification for determining the type and amount of property and services to be acquired through a procurement will address the following requirements and other matters.



10.4.10.1 Eligibility

The Airports Authority will only acquire property and services that are eligible for acquisition under the Federal law authorizing the applicable FTA assistance award and any related regulations. [FTA C 4220.1F, Ch. IV, para. 1.a]

10.4.10.2 Necessity

The Airports Authority will Contract only for its current and reasonably expected needs and will not add quantities or options to Third Party Contracts to permit assignment to another party at a later date. If the Airports Authority's needs later change due to changed circumstances or honest mistakes, it may assign its unneeded Contract authority to another entity that would like to acquire the property or services. [FTA C 4220.1F, Ch. IV, para. 1,b]

10.4.10.3 Procurement Size

The Contracting Officer will consider whether to consolidate or break out elements of the procurement to obtain a more economical purchase.

- (1) Joint Procurements. It may be economically advantageous for the Airports Authority to enter into a joint procurement with others that have similar needs. Participation in a joint procurement, however, does not relieve the Airports Authority from the requirements and responsibilities it would have were it procuring the property or services itself, and does not diminish its responsibility for the actions of other participants because the primary administrative responsibility for a particular action resides in an entity other than in itself. [FTA C 4220.1 F, Ch. IV, para. 1.c(1)]
- (2) Smaller Procurements. In some circumstances, breaking out procurements may provide greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms, and women's business enterprises to participate. Absent efforts to foster greater opportunities for DBE, small and minority firms, and women's business enterprises, the Contracting Officer will not split a larger procurement merely to gain the advantages of small purchase procedures available under Paragraph 10.4.6.2. [FTA C 4220.1 F, Ch. IV, para. 1.c(2)]
- (3) Options. Contracts may include options to ensure the future availability of property or services, so long as the requesting office is able to justify them as needed for its project purposes. An option is a unilateral right in a Contract by which, for a specified time, the Airports Authority may acquire additional equipment, supplies, or other property, or services than procured for the Contract term. An option may also extend the term of the Contract. [FTA C 4220.1F, Ch. IV, para. 1. d]
- (4) Lease Versus Purchase. The Airports Authority will lease, rather than acquire, property only if leasing is more cost effective than full ownership. Before the Airports Authority may lease an asset, the Contracting Officer will make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison will be reasonable and based on realistic current market conditions, and the expected useful service life of the asset. [FTA C 4220.1F, Ch. IV, para. 1.e]
- (5) Specifications. The Contracting Officer will ensure that the requesting offices prepare specifications that describe their needs and are not exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of Federal laws or regulations. In general,



the specifications will clearly describe the property or services to be procured and state how the proposals will be evaluated. [FTA C 4220.1F, Ch. IV, para. 1.f]

10.5 FEDERAL REQUIREMENTS THAT MAY AFFECT THE AIRPORTS AUTHORITY'S ACQUISITIONS

In order for the Airports Authority to use FTA assistance to support the acquisitions of property or services to which this Chapter 10 applies, it must comply with a variety of Federal requirements, arising under Federal laws and regulations, that apply to such acquisitions. These requirements, and the Airports Authority's compliance with them, are addressed in this Paragraph 10.5.

10.5.1 Contractor Qualifications

The following requirements will be addressed by the Contracting Officer when making the Contractor selections.

10.5.1.1 Responsibility Requirements

The Airports Authority will only award Contracts to responsible Contractors. Responsible Contractors are those capable of successfully performing under the terms and conditions of the proposed Contract. Before selecting a Contractor for a Contract, the Contracting Officer will consider such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Before selecting a Contractor to perform design or construction work on a fixed guideway project, the Contractor Officer will consider the Contractor's past performance information reported in FTA's required Contractor Performance Assessment Reports. [FTA C 4220.1F, Ch. IV, para. 2.a(1)]

10.5.1.2 Debarment and Suspension

- (1) The Contracting Officer will ensure that the Federal Debarment and Suspension clause (See Appendix C, Clause 9) is included in any Contracts of \$25,000 or more. When such a Contract is involved, all potential Contractors will be required to submit a Debarment and Suspension Certification as part of their Bid/proposal packages, and, if selected, to ensure that this same requirement is placed in all of their lower tier Contracts.
- (2) The Contracting Officer also will check the General Services Administration Excluded Parties List System before awarding Contracts of \$25,000 or more. A screen print of the webpage will be included in the Contract file.
- (3) The Contracting Officer may treat any potential Contractor or subcontractor listed on a centralized State government Debarment and suspension list as non-responsible and ineligible for Contract award.

[FTA C 4220.1F, Ch. IV, para. 2.a(2)]

10.5.1.3 Conflict of Interest

The Contracting Officer will consider any conflict of interest issues a potential Contractor might have, including lack of impartiality, impaired objectivity, or unfair competitive advantage. [FTA C 4220.1F, Ch. IV, para. 2.a(3)]



10.5.1.4 Lobbying Certification and Disclosure

The Contracting Officer will include a Federal lobbying clause in any Contract exceeding \$100,000 (See Appendix C, Clause 12). [FTA C 4220.1F, Ch. IV, para. 2.a(4)]

10.5.1.5 Federal Civil Rights Laws and Regulations

The Contracting Officer will include the Federal Civil Rights clause (see Appendix C, Clause 6) in each Contract exceeding \$10,000. The Federal Civil Rights requirements include, but are not limited to, Federal requirements relating to equal employment opportunity requirements, nondiscrimination on the basis of sex, nondiscrimination on the basis of age, and Federal protections for individual with disabilities. [FTA C 4220.1F, Ch. IV, para. 2.a(5)]

10.5.1.6 Socio-Economic Development

The following provisions arise from Federal laws and regulations that require competitive opportunities to be made available for Contractors that qualify as a Disadvantaged Business Enterprise, minority-owned firm, women's business enterprise, or small business.

- (1) Disadvantaged Business Enterprises (DBE). Federal law requires the FTA to make available at least 10 percent of its funding for Contracts with small business concerns owned and controlled by socially and economically disadvantaged people. Recipients like the Airports Authority assist the FTA in meeting this national goal. Whenever, by virtue of a grant or other form of Federal assistance, the Airports Authority is required to have a DBE program, that program will address Third Party Contracts which will be funded in part by the Federal assistance and, in addition, where appropriate, will establish a DBE goal related to such Third Party Contracts. [FTA C 4220.1F, Ch. IV, para. 2.a(6)(a)]
- (2) Small and Minority Firms and Women's Business Enterprises. In order to ensure that it uses small and minority firms and women's business enterprises in Third Party Contracts to the fullest extent practicable, the Airports Authority will make information available to potentially qualified firms about procurement opportunities, will include these firms on Solicitation lists, and will request their participation when they are potential sources. In addition, in order to make procurement opportunities available to these firms, the Airports Authority will divide total procurement requirements into smaller tasks or quantities when economically and operationally feasible. The Contracting Officer will require third party Contractors to ensure that the preceding provisions are placed in all lower tier Contracts. [FTA C 4220.1F, Ch. IV, para. 2.a(6)(b)]

10.5.1.7 Sensitive Security Information

The Contracting Officer will ensure that each third party Contractor protects, and takes measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of the Contract or subcontract. [FTA C 4220.1F, Ch. IV, para. 2.a(7)]

10.5.1.8 Seat Belt Use

The Contracting Officer will encourage each third party Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned or rented or personally operated vehicles, and will require the Contractor to ensure that this provision is included in all lower tier Contracts. [FTA C 4220.1F, Ch. IV, para. 2.a(8)]



10.5.2 Administrative Restrictions on the Acquisition of Property and Services

10.5.2.1 Legal Eligibility

Before proceeding with the acquisition of any property or services, the Contracting Officer will determine that the property or services are eligible for support under the Federal law applicable to the Federal assistance to be used. [FTA C 4220.1F, Ch. IV, para. 2.b(1)]

10.5.2.2 Scope of the Project

Before proceeding with the acquisition of any property or services, the Contracting Officer will determine that the property or services are eligible for support under the specific grant which is providing the Federal assistance to be used. [FTA C 4220.1F, Ch. IV, para. 2.b(2)]

10.5.2.3 Period of Performance (Contract Term)

The Contracting Officer will use sound business judgment and be judicious in establishing and extending a Contract's period of performance or term. A Contract's period of performance will be reasonable. Generally, the period will not exceed the time necessary to accomplish the purpose of the Contract, although other factors, including competition, pricing, fairness and public perception, will be considered in setting the period. The Contracting Officer will document the rationale for determining the performance period for each Contract. While the Airports Authority has no plans to acquire rolling stock, it should be noted that FTA restricts any Contract for rolling stock and replacement parts with a period of performance not to exceed five years, inclusive of options.

When considering an extension to a Contract term, the Contracting Officer will determine whether it represents a permissible Contract change or an impermissible Cardinal Change. Any extension that represents a Cardinal Change will not be approved. [FTA C 4220.1 F, Ch. IV, para. 2.b(3)]

10.5.2.4 Federal Cost Principles

Under the Common Grant Rule, Third Party Contract costs are to conform to applicable Federal cost principles to be eligible for Federal assistance. The Contracting Officer will ensure that costs incurred under Third Party Contracts awarded conform to applicable Federal cost principles and, in addition, are necessary and reasonable, are allocable to the underlying Federally-assisted project, and are either authorized or not prohibited by Federal law or regulation. [FTA C 4220.1F, Ch. IV, para. 2.b(4)]

10.5.2.5 Payment Provisions

The Airports Authority may use its own funds to finance its Third Party Contracts. However, where the Airports Authority intends to make Contract payments with FTA assistance, to make payments with its own funds but be reimbursed with FTA assistance, or to make payments with dedicated local share funds, it will structure its payment provisions according to the following.

- (1) The Airports Authority may not use FTA assistance to finance or reimburse Contract costs or use dedicated local share funds for Contract costs unless the FTA has (i) awarded a grant or other form of Federal assistance to the Airports Authority for or in connection with the underlying project, (ii) given the Airports Authority pre-award authority for the underlying project through a Federal Register notice, (iii) issued a letter of no prejudice for the underlying project, or (iv) approved specific Contract costs in advance of their being incurred. [FTA C 4220.1F, Ch. IV, para. 2.b(5)(a)]



- (2) Advance Payments. The following provisions apply to Advance Payments (as defined in Paragraph 10.1.1):
- (a) Generally, the Airports Authority will not make Advance Payments (as defined in Paragraph 10.1.1) to a Contractor since these payments are usually not eligible for Federal assistance.
 - (b) The FTA occasionally makes exceptions to its Advance Payment prohibitions when a Recipient can provide sound business reasons for making such payments and has obtained the FTA's advance written concurrence. When the FTA has approved the Airports Authority's use of Advance Payments and unless the FTA has otherwise instructed, the Contracting Officer will ensure that the Contract has adequate provisions for security for those payments, usually in the form of a bond, letter of credit or corporate guaranty.
 - (c) The FTA also recognizes that Advance Payments are typically required for such things as public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, in Contracts for the acquisition of such items, the Contracting Officer may provide for the making of Advance Payments; provided, that, when the total of such payments is expected to exceed \$100,000, the Contracting Officer will seek FTA concurrence of the payments.

[FTA C 4220.1F, Ch. IV, para. 2.b(5)(b)]

- (3) Progress Payments. The Contracting Officer may provide for the making of Progress Payments (as defined in Paragraph 10.1.10), provided adequate security is obtained for those payments and sufficient written documentation is provided to substantiate the work for which the payments are made.
- (a) Adequate Security for Progress Payments. Adequate security for Progress Payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the Airports Authority's financial interest in the Progress Payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. The FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. In determining the nature and extent of security, the Contracting Officer will consider the costs associated with providing the security and the impact of those costs on the Contract price, as well as the consequences of incomplete performance.
 - (b) Adequate Documentation. The Contracting Officer will endeavor to ensure that documentation is prepared to demonstrate completion of the amount of work for which progress payments are made.
 - (c) Percentage of Completion Method. In accordance with the Common Grant Rule, Progress Payments for construction Contracts will be made on the percentage of completion method described in the rule. Progress Payments for other Contracts will not be based on this percentage method.



[FTA C 4220.1F, Ch. IV, para. 2.b(5)(c)]

10.5.2.6 Protections Against Performance Difficulties

The Airports Authority will include in Contracts awarded under this Chapter 10 provisions that are designed to reduce potential problems that may occur during Contract performance, including the provisions described below.

- (1) Changes. The Contracting Officer will include changes and changed conditions provisions or clauses in most Contracts, except for routine supply Contracts. [FTA C 4220.1F, Ch. IV, para. 2.b(6)(a)]
- (2) Remedies. The Contracting Officer will include the following provisions, as applicable:
 - (a) Liquidated Damages. Provisions for liquidated damages will be included when the Airports Authority reasonably expects to suffer damages if Contract completion is delayed, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rates or standards to be used in calculating the amount of liquidated damages are to reasonably reflect the Airports Authority's damages should the Contract completion be delayed, and are to be specified in the Solicitation and Contract. The calculation of liquidated damages is often established at a specific rate per day for each day beyond the Contract's completion or delivery date or performance period. The Contracting Officer will include in the procurement file a record of the calculation and rationale for the daily rate or other amount of damages established. Any liquidated damages recovered will be credited to the underlying project account unless the FTA permits otherwise.
 - (b) Violation or Breach. Contracts exceeding \$100,000 will include administrative, contractual, or legal remedies for violations or breaches of the Contract by the Contractor.
 - (c) Suspension of Work. When specifically required by the FTA, provisions pertaining to suspension of work will be included.
 - (d) Termination. Termination for cause and termination for convenience provisions will be included in Contracts exceeding \$10,000.

[FTA C 4220.1F, Ch. IV, para. 2.b(6)(b)]

10.5.3 Socio-Economic Requirements for the Acquisition of Property and Services

10.5.3.1 Labor

The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:

- (1) Wage and Hour Requirements. The Airports Authority will include provisions in Contracts exceeding \$100,000 that require the Contractor, except where permitted by law, to compute the wages of every worker based on a standard workweek of forty (40) hours and that provide that work in excess of the standard workweek is permitted only if the worker is compensated, at a rate of not less than one and one-half times the worker's



basic rate of pay, for all hours worked in excess of forty (40) hours in the workweek. In addition, the Airports Authority will include provisions in construction Contracts exceeding \$2,000 that require the Contractor to comply with the prevailing wage requirements of the Davis-Bacon Act.

- (2) Fair Labor Standards. The Airports Authority will include a provision in all Contracts stating that the Fair Labor Standards Act, 29 U.S.C. Sections 201 et seq., applies to employees performing work involving commerce.

[FTA C 4220.1F, Ch. IV, para. 2.c(1)]

10.5.3.2 Civil Rights

The Airports Authority will include the Federal civil rights provision (see Appendix C, Clause 6) in all Contracts exceeding \$10,000. [FTA 4220.1F, Ch. IV, para. 2.c(2)]

10.5.3.3 Environmental Protections

- (1) Environmental Mitigation. The Contracting Officer will include the Federal environmental Contract provision, (see Appendix C) in all Contracts. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(a)]
- (2) National Environmental Policy Act. Certain acquisitions and the timing of certain acquisitions can adversely affect the environmental review process required for a project constituting a major Federal action. The Airports Authority will not enter a Contract or other binding arrangement for the acquisition of property that may or would affect environmental impact determinations with respect to the underlying project, or otherwise interfere with any required environmental impact reviews, until applicable environmental impact determinations have been made. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(b)]
- (3) EPA Violating Facilities. In accordance with the Common Grant Rule, the Airports Authority will not enter any Contract that provides for, or allows at any tier exceeding \$100,000, the use of any facility included in the Environmental Protection Agency "List of Violating Facilities." [FTA C 4220.1F, Ch. IV, paras. 2.c(3)(d) and 2.c(3)(e)]
- (4) Clean Air. The Contracting Officer will include a provision in all Contracts exceeding \$100,000 that requires the Contractor to comply with all applicable standards, orders, or regulations issued under the Clean Air Act, as amended, 42 U.S.C. Section 7414, et. Seq., as amended, and to ensure that this same requirement is in subcontracts exceeding \$100,000 at all tiers. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(d)]
- (5) Clean Water. The Contracting Officer will include a provision in all Contracts exceeding \$100,000, that requires the Contractor to comply with all applicable standards, orders, or regulations issued under the Clean Water Act, 33 U.S.C. Section 1251, et. seq., as amended, and to ensure that this same requirement is in subcontracts exceeding \$100,000 at all tiers. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(e)]
- (6) Recycled Products. In the acquisition of property and services of \$10,000 or more, the Airports Authority will provide a competitive preference, in accordance with the Resource Conservation and Recovery Act of 1976, to products and services that conserve natural resources, protect the environment, and are energy efficient. [FTA C 4220.1F, Ch. IV, para. 2.c(3)(f)]



10.5.3.4 Energy Conservation

The Airports Authority will include the Federal energy conservation provision (see Appendix C, Clause 26) in all Contracts. [FTA C 4220.1F, Ch. IV, para. 2.c(4)]

10.5.3.5 Preference for U.S. Property—Buy America

The FTA's "Buy America" regulations apply to procurements in excess of \$100,000 that involve the purchase of iron, steel, manufactured goods, or rolling stock to be delivered to the Airports Authority for incorporation into an FTA-assisted project. Property that the Contractor acquires to fabricate a deliverable for the Airports Authority, such as tools, machinery, facilities or other assets, are not subject to FTA's Buy America requirements unless the Airports Authority intends to take possession of those assets upon completion of the project. The Contracting Officer will include the appropriate Buy America provision (see Appendix C, Clause 10) in all appropriate Contracts. [FTA C 4220.1F, Ch. IV, para. 2.c(5)]

10.5.3.6 Shipments of Property—U.S. Flag Requirements

- (1) Shipments by Ocean Vessel. With few exceptions, Federal regulations require that U.S. Flag vessels be used to transport at least fifty (50) percent of any Federally assisted property. The Contracting Officer will include the Federal Cargo Preference provision (See Appendix C, Clause 15) in all Contracts where the transportation of goods will be by ocean freight. [FTA C 4220.1F, Ch. IV, para. 2.c(6)(a)]
- (2) Shipments by Air Carrier. The Fly America Act requires certain air shipments to be made on U.S. flag carriers unless U.S. flag carriers are not reasonably available. The Contracting Officer will include the Federal Fly America provision (see Appendix C, Clause 16) in all Contracts where transportation of goods will be by air freight. [FTA C 4220.1F, Ch. IV, para. 2.c(6)(b)]

10.5.3.7 Project Travel—Use of U.S. Flag Air Carriers

The Fly America Act requires that air travel needed for people participating in a Federally assisted project to be by U.S. flag carrier, unless U.S. flag carriers are not reasonably available. The Contracting Officer will include the Federal Fly America provision (see Appendix C, Clause 16) in all Contracts where air travel is involved. [FTA C 4220.1F, Ch. IV, para. 2.c(7)]

10.5.4 Technical Restrictions on the Acquisition of Property and Services

10.5.4.1 Intelligent Transportation Systems

Procurements of intelligent transportation system (ITS) property and services are to comply with the National ITS Architecture and Standards. The Contracting Officer will ensure the Federal ITS provision (see Appendix C, Clause 28) is included in all Contracts involving ITS. [FTA C 4220.1F, Ch. IV, para. 2.d(1)]

10.5.4.2 Metric Measurements

The Airports Authority will accept property and services with dimensions expressed in metric measurements, to the extent practicable and feasible. [FTA C 4220.1F, Ch. IV, para. 2.d(2)]



10.5.4.3 Use of \$1 Coins

When procuring FTA assisted property that requires the use of coins or currency in public transportation service or supporting service, the Contracting Officer will ensure that the property is fully capable of accepting and dispensing \$1 coins. [FTA C 4220.1F, Ch. IV, para. 2.d(3)]

10.5.5 Rolling Stock – Special Requirements

The Airports Authority does not procure rolling stock, which includes buses and railcars, in procurements subject to this Chapter 10. [FTA C 4220.1F, Ch. IV, para. 2.e]

10.5.6 Public Transportation Services – Special Requirements

Federal requirements applicable to the acquisition of property and services to be used in the delivery of public transportation services are inapplicable to the Airports Authority since it does not deliver such services. [FTA C 4220.1F, Ch. IV, para. 2.f]

10.5.7 Construction – Special Requirements

10.5.7.1 Bonding

Under the Common Grant Rule bonds are to be obtained for construction Contracts exceeding the Federal simplified acquisition threshold unless the FTA determines that other arrangements adequately protect the Federal interest. The following provisions are based upon FTA's bonding requirements and policies and apply to construction procurements in excess of the Federal simplified acquisition threshold:

- (1) Bid Guarantee. The Contracting Officer will require each Bidder to provide a Bid guarantee equivalent to five percent (5%) of its Bid price. The "Bid guarantee" must consist of a firm commitment, such as a Bid bond, certified check, or other negotiable instrument accompanying a Bid, that ensures that the Bidder will honor its Bid upon acceptance.
- (2) Performance Bond. The Contracting Officer will require the selected third party Contractor to obtain a performance bond for 100 percent (100%) of the Contract price unless a lower bond is approved by the FTA (see paragraph (5) below). The performance bond shall ensure completion of the Contractor's obligations under the Third Party Contract.
- (3) Payment Bond. The Contracting Officer will require the third party Contractor to obtain a standard payment bond for 100 percent (100%) of the Contract price, except when the Contracting Officer determines that the Airports Authority's interest will be adequately protected by a bond sized as provided in subparagraphs (a) through (c). The payment bond shall ensure that the Contractor will pay all people supplying labor and material under the Third Party Contract as required by law.
 - (a) A bond between 100 percent (100%) and fifty percent (50%) of the Contract price may be required if the Contract price is \$1 million or less,
 - (b) A bond between 100 percent (100%) and forty percent (40%) of the Contract price may be required if the Contract price is more than \$1 million but not more than \$5 million, or
 - (c) A bond between 100 percent (100%) of the Contract price and \$2.5 million if the Contract price is \$5 million or more.



- (4) **Acceptable Sureties.** The Contracting Officer will require the Contractor to obtain construction bonds from companies holding certificates of authority as acceptable sureties under U.S. Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223.
- (5) **Reduced Bonding.** FTA's BPPM (Section 8) recognizes that on certain types of projects, such as design-build and large capital projects (in excess of \$200 million), it may be appropriate for the Recipient to seek a waiver from the standard bonding requirements set forth in paragraphs (1) through (3) above. FTA will approve bonds that are lower than the amounts set forth above if it determines that the lower bonds will adequately protect the Federal interest. In the event the Airports Authority wishes to adopt less stringent performance bonding requirements for a specific class of projects or for a particular project, it will submit its request and rationale to the FTA Regional Administrator, and will establish lower performance bond requirements only as approved by the FTA.
- (6) **Higher Bonding.** If the Airports Authority's wishes to impose bonding requirements that exceed those described above in this section, it will submit a specific request and rationale to the FTA Regional Administrator, and will not impose those higher requirements without FTA approval.

[FTA C 4220.1F, Ch. IV, para. 2.i(1)]

10.5.7.2 Seismic Safety

The Airports Authority will include the Federal seismic safety provision (see Appendix C, Clause 20) in Contracts for the construction of new buildings or additions to existing buildings. [FTA C 4220.1F, Ch. IV, para. 2.i(2)]

10.5.7.3 Value Engineering

The Contracting Officer will include value engineering provisions in Contracts for construction projects whenever value engineering is a pre-requisite for an award of Federal assistance. In other cases, the Contracting Officer will determine whether the inclusion of such provisions in construction Contracts would advance the Federal interest. (Note: The FTA generally does not approve a New Starts grant application for final design funding or enter a full funding grant agreement until value engineering is complete. Also, the FTA considers that some contractual arrangements (e.g., design-build Contracts) inherently include value engineering and, for those Contracts, does not require the value engineering provision). [FTA C 4220.1F, Ch. IV, para. 2.i(3)]

10.5.7.4 Equal Employment Opportunity

The Contracting Officer will include in all construction Contracts exceeding \$10,000 provisions (see Appendix C, Clause 6) requiring compliance with U.S. Department of Labor regulations for equal employment opportunity. [FTA C 4220.1F, Ch. IV, para. 2.i(4)]

10.5.7.5 Prevailing Wages

The Contracting Officer will include in construction Contracts exceeding \$2,000 a provision (see Appendix C, Clause 17) requiring compliance with the prevailing wage requirements of the Davis-Bacon Act and the flow down of these requirements into Contracts at all tiers. [FTA C 4220.1F, Ch. IV, para. 2.i(5)]



10.5.7.6 Anti-Kickback

The Contracting Officer will include a provision (see Appendix C, Clause 17) for compliance with the Copeland “Anti-Kickback” Act, as amended, in construction and repair Contracts exceeding \$2,000. [FTA C 4220.1F, Ch. IV, para. 2.i(6)]

10.5.7.7 Construction Safety

The Contracting Officer will include in construction Contracts exceeding \$100,000 a provision (see Appendix C, Clause 18) to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous, as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act. [FTA C 4220.1F, Ch. IV, para. 2.i(7)]

10.5.7.8 Labor Neutrality

The Contracting Officer may include in construction Contracts a provision requiring the use of a project labor agreement (PLA). In determining whether to include such a provision, the Contracting Officer will consider, among other things, the factors identified in the FAR, at 48 C.F.R. § 22.503, promulgated in response to Executive Order 13502 (February 6, 2009). Nothing in this section should be construed as limiting the ability of the Airports Authority to enter into a PLA in connection with a substantial construction project. [FTA C 4220.1F, Ch. IV, para. 2.i(8)]

10.5.7.9 Preference for U.S. Property—Buy America

The Contracting Officer will include a Buy America provision (see Appendix C, Clause 10) in construction Contract exceeding \$100,000. See Paragraph 10.5.3.5, [FTA C 4220.1F, Ch. IV, para. 2.i(9)]

10.5.7.10 Accessibility

The Contracting Officer will include, in all construction Contracts for facilities to be used in public transportation, a provision (see Appendix C, Clause 29) requiring those facilities to be accessible to individuals with disabilities and the elderly, as required by Federal law. [FTA C 4220.1F, Ch. IV, para. 2.i(10)] [FTA C 4220.1F, Ch. IV, para. 2.h]

10.5.8 Research, Development, Demonstration, Deployment, and Special Studies – Special Requirements

The Airports Authority does not procure research, development, demonstration, deployment or special studies. [FTA C 4220.1F, Ch. IV, para. 2.j]

10.5.9 Audit Services

The following provisions apply to the Airports Authority's acquisition of audit services under this Chapter 10.

10.5.9.1 Single Audit Act

Each year in which it spends \$500,000 or more in Federal funds, the Airports Authority will obtain an audit as required by the Single Audit Act of 1984, as amended, 31 U.S.C. § 7501 et seq., and will ensure compliance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” as revised.

- (1) Organizational Conflicts of Interest. The auditor selected will be independent of the Airports Authority.



- (2) Eligibility of Costs. The Airports Authority is authorized to charge the costs for audits required by the Single Audit Act to its Federally-assisted projects as direct or indirect costs as permitted by applicable Federal Cost Principles. On the other hand, it is not authorized to finance audit costs with Federal assistance when the audit covers a year in which the Airports Authority has expended less than \$500,000 in Federal funds.

10.5.9.2 Other Project Audits

Before procuring audit services for a specific Contract or project, the Contracting Officer will consider the following:

- (1) Organizational Conflict of Interests. In general, the auditor selected to perform the audit should be independent of the Contractor to be audited.
- (2) Verification of Indirect Costs. Federal verification of a Contractor's indirect cost rates, such as provisional overhead (burden) and General & Administrative (G&A) rates, may be required. To the extent possible, relevant information available through undisputed audits of the Contractor by other recipients should be used.
- (3) Duplication of Services. To prevent duplication and ensure the eligibility of particular audit services for Federal financial participation, the Airports Authority will contact the FTA before awarding a Contract for such services. Pre-award discussions with the FTA are particularly important in connection with the audit of A&E services since Federal law at 49 U.S.C. Section 5325(b)(3), requires that the cost principles in FAR Part 31 be used to audit A&E Contracts and, in addition, that indirect cost rates established under FAR cost principles be utilized by A&E Contractors and subcontractors.
- (4) Obtaining Indirect Cost Rates. The Airports Authority and third party Contractors may obtain indirect cost rates through negotiations with OMB.
- (5) Eligibility of Costs. Costs of audits required by the Single Audit Act are eligible for Federal financial participation as a direct or indirect charge, as permitted by applicable Federal cost principles. (Note: The FTA reserves the right to disallow payments for duplicative audit costs or charges.)

[FTA C 4220.1F, Ch. IV, para. 2.k]

10.5.10 Record Keeping

Under the Common Grant Rule, the Airports Authority is generally required to prepare and maintain adequate and readily accessible performance, financial and other records relating to any project financed with FTA financial assistance, and to preserve these records for three years after final project payments are made and all other project matters are closed. In addition, the Airports Authority is to provide access to these records to the FTA, other DOT officials and the Comptroller General.

As part of this general obligation, the Airports Authority will prepare and maintain, and make available to the FTA, written records detailing the history of each Federally- assisted project procurement and containing the following information prepared by the Contracting Officer responsible for the procurement.



- (1) Procurement Method. The Contracting Officer will provide the reasons for selecting the method of procurement used, including a sole source justification for any acquisition that does not qualify as competitive;
- (2) Contract Type. The Contracting Officer will provide the reasons for selecting the Contract type it used (fixed price, cost reimbursement, etc.);
- (3) Contractor Selection. The Contracting Officer will provide the reasons for selecting or rejecting a Contractor and also a written responsibility determination for the successful Contractor;
- (4) Cost or Price. The Contracting Officer will provide an evaluation of and the justification for the awarded Contract cost or price;
- (5) Reasonable Documentation. The Contracting Officer will have discretion to determine the extent of documentation. However, the extent of documentation is to be reasonable and should be commensurate with the size and complexity of the procurement itself. Thus, procurements that are substantial may require extensive documentation [FTA C 4220.1F, Ch. III, para. 3.d(1)]; and
- (6) Access to Records. The Contracting Officer will include in all Contracts a provision (see Appendix C, Clause 3) requiring the Contractor to grant to the Airports Authority, FTA and DOT officials, the Comptroller General, and any of their representatives, the right to access, examine and inspect all records, documents, and papers, including Contracts, related to any FTA project financed with Federal assistance.

[FTA C 4220.1 F, Ch. III, para. 3.d(2)]

10.6 PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS

10.6.1 Competition Required

The FTA requires the Airports Authority to adopt procurement procedures, for use in acquisitions that are subject to this Chapter 10, which provide for Full and Open Competition, except as otherwise permitted. Accordingly, the Airports Authority will procure property and services, and award Third-Party Contracts, on the basis of the following.

- (1) Solicitation by the Airports Authority. The Airports Authority's Solicitation and procurement methods are described above in Paragraph 10.4.6. Acquisitions made using these methods will fulfill the FTA requirements for Full and Open Competition. [FTA C 4220.1F, Ch. VI, para. 1.a]
- (2) Unsolicited Proposals. The Airports Authority may enter into Contracts based on an unsolicited proposal. Receipt of an unsolicited proposal will 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, the Airports Authority will seek competition. To satisfy the requirement for Full and Open Competition, the Contracting Officer will take the following actions before entering into a Contract resulting from an unsolicited proposal.



- (a) Receipt. Publicize its receipt of the unsolicited proposal,
- (b) Adequate Description. Publicize an adequate description of the property or services offered in the unsolicited proposal without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the offered property or services,
- (c) Interest in the Property or Services. Publicize the Airports Authority's interest in acquiring the property or services described in the unsolicited proposal,
- (d) Adequate Opportunity to Compete. Provide an adequate opportunity for interested parties to comment or submit competing proposals, and
- (e) Contract Award Based on Proposals Received. Publicize its intention to award a Contract based on the unsolicited proposal or another proposal submitted in response to the publication.
- (f) Sole Source Award. 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 offered property or services, the Airports Authority may make a sole source award to the Offeror of the unsolicited proposal. Such a sole source award may not be based solely on the unique capability of the Offeror to provide the specific offered property or services.

[FTA C 4220.1F, Ch. VI, para. 1.b]

- (3) Prequalification. Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether the property satisfies the Recipient's standards. The Airports Authority may prequalify people, firms, and property for procurement purposes if:
 - (a) Lists. The Contracting Officer ensures that any prequalification list that is used is current.
 - (b) Sources. The Contracting Officer ensures that the prequalification list includes enough qualified sources to provide Full and Open Competition.
 - (c) Qualification Periods. The Contracting Officer permits potential Bidders or Offerors to qualify for the prequalification list during a Solicitation period (from the issuance of the Solicitation to its closing date). The Contracting Officer is not required to hold a particular Solicitation open to accommodate a potential supplier that submits property for approval before or during that Solicitation. Nor must the Airports Authority expedite or shorten prequalification evaluations of Bidders, Offerors, or property presented for review during the Solicitation period.

[FTA C 4220.1F, Ch. VI, para. 1.c]

10.6.2 Solicitation Requirements and Restrictions

The Contracting Officer will ensure that each Solicitation under this Chapter 10 provides the following information:



10.6.2.1 Description of the Property or Services

The Solicitation and the Contract awarded will include a clear and accurate description of the Airports Authority's technical requirements for the property or services to be acquired in a manner that provides for Full and Open Competition.

- (1) What to Include. The description may include a statement of the qualitative nature of the property or services to be acquired. When possible, the Airports Authority will describe its requirements in terms of functions to be performed or level of performance to be achieved, including the range of acceptable characteristics or minimum acceptable standards, rather than detailed product specifications. (Note: The FTA prefers performance or functional specifications, but does not prohibit the use of detailed technical specifications when appropriate.)
- (2) Quantities Limited to Actual Needs. The property and services to be acquired will be limited to the quantity of property and the extent of services the Airports Authority actually needs at the time of acquisition. The Airports Authority will not add quantities or options to Contracts solely to allow it to assign these quantities or options at a later date.
- (3) Brand Name or Equal. When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance, in which case the salient characteristics that the "equal" property must possess will be identified.
- (4) Prohibitions. The Airports Authority will not use Solicitation requirements that contain specifications or other features that unduly restrict competition or that are exclusionary or discriminatory. The following provisions describe certain Solicitation features and other circumstances that are to be avoided.
 - (a) Excessive Qualifications. Imposing unreasonable business requirements for Bidders or Offerors.
 - (b) Unnecessary Experience. Imposing unnecessary experience requirements for Bidders and Offerors.
 - (c) Improper Prequalification. Using prequalification procedures that conflict with the procedures described in Paragraph 10.4.1(c) of this Manual.
 - (d) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer Contract if that award is not for the property or services specified for delivery under the Contract.
 - (e) Excessive Bonding. In some circumstances, imposing high bonding requirements may increase the cost of the Contract and thereby restrict competition, particularly on large capital projects (in excess of \$200 million), on design-build projects and for disadvantaged business enterprises. (Note: To encourage greater Contractor participation, the FTA does not require the imposition of bonding requirements on Contractors other than construction bonding. Where bonding requirements for a Contract result in "excessive bonding," under the Common Grant Rule, and as a result are deemed to be restrictive of competition, the FTA will not provide Federal assistance for that procurement.)



- (f) Brand Name Only. Specifying only a “brand name” product without allowing Offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- (g) In-State or Local Geographic Restrictions. Specifying in-State or local geographical preferences, or evaluating Bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. Exceptions include the following:
 - Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the Contract in view of the nature and size of the project.
 - Licensing. A Commonwealth of Virginia license may be a procurement requirement provided the requirements does not conflict with Federal law.
 - Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support Contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in the area affected by a major disaster or emergency.
- (h) Organizational Conflict of Interests. Engaging in practices that result in an organizational conflict of interests is prohibited:
 - Occurrence. An organizational conflict of interest occurs when any of the following circumstances arise:
 - 1 Lack of Impartiality or Impaired Objectivity. A potential Contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the Airports Authority due to other activities, relationships, Contracts, or circumstances.
 - 2 Unequal Access to Information. A potential Contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier Contract.
 - 3 Biased Ground Rules. During the conduct of an earlier procurement, a potential Contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
 - Remedies. The Contracting Officer 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 will avoid, neutralize, or mitigate such conflicts as early as possible.
- (i) Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies (e.g., the submissions of identical Bid prices for the same products by the same group of firms, or an unnatural pattern of awards that have the cumulative effect of apportioning work among a fixed group of Bidders or Offerors).



- (j) Arbitrary Action. Taking any arbitrary action in the procurement process.

[FTA C 4220.1F, Ch. VI, para. 2.a]

10.6.2.2 Evaluation Factors

The Solicitation will identify all factors to be used in evaluating Bids or proposals. [FTA C 4220.1 F, Ch. VI, para. 2.b]

10.6.2.3 Contract Type Specified

Solicitations will state the type of Contract that will be awarded. Permissible types of Contracts are described below.

- (1) Typical Contract Types. Contract types may include the following:
 - (a) Firm Fixed Price. A firm fixed price Contract contains a price that remains fixed irrespective of the Contractor's cost experience in performing the Contract. A firm fixed price Contract may include an economic price adjustment provision, incentives and/or allowances.
 - (b) Cost Reimbursement. A cost-reimbursement Contract provides for payment of the Contractor's allowable incurred costs, to the extent prescribed in the Contract. Allowable costs may include incentives if the Airports Authority believes they can prove helpful. Cost-reimbursement Contracts are to be used only when uncertainties involved in Contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price Contract.
- (2) Prohibited or Restricted Contract Types. The following Contract types are restricted or prohibited:
 - (a) Cost Plus a Percentage of Cost—Prohibited. The Airports Authority will not use the "cost plus a percentage of cost" or "cost plus a percentage of construction cost" type of Contract.
 - (b) Time and Materials—Restricted. The Airports Authority will use a "time and materials" type of Contract only (i) after determining that no other Contract type is suitable, and (ii) the Contract specifies a ceiling price that, while not a firm fixed price, is a price the Contractor may not exceed except at its own risk. (See Appendix C for sample Time and Materials Report.)

[FTA C 4220.1F, Ch. VI, para. 2c]

10.6.2.4 Other Federal Requirements Affecting the Property or Services to be Acquired

Solicitations, as well as awarded Contracts, will identify those Federal requirements that will affect Contract scope and performance. [FTA C 4220.1F, Ch. VI, para. 2.d]

10.6.2.5 Other Federal Requirements Affecting the Bidder or Offeror and the Contractor

Solicitations, as well as awarded Contracts, under this Chapter 10, will identify all Federal requirements that a Bidder or Offeror must fulfill before and during Contract performance. (See Paragraph 10.5.) [FTA C 4220.1F, Ch. VI, para. 2.e]



10.6.2.6 Award to Other Than the Low Bidder

When the Airports Authority intends to reserve its right to award to other than the low Bidder or Offeror, the Solicitation will expressly state that intent and the reserved right. [FTA C 4220.1F, Ch. VI, para. 2.f]

10.6.2.7 Rejection of All Bids or Offers

The Airports Authority has the right to reject any or all Bids or proposals submitted in response to an Invitation for Bids or Request for Proposals if there is a sound, documented business reason. [FTA C 4220.1F, Ch. VI, paras. 2g and 8.c]

10.6.3 Cost and Price Analysis

The Contracting Officer will perform a cost or price analysis in connection with each procurement action, including Contract modifications. The method and degree of this analysis will depend on the facts and circumstances surrounding the procurement. However, in every procurement, as a starting point, an Independent Cost Estimate (ICE) will be made before receiving Bids or proposals. The ICE must be in writing and a copy must be placed in the procurement file. See Appendix C for sample ICE form (Note: The FTA identifies a number of benefits associated with ICEs. Establishing a cost estimate using a method independent of the prospective Bidders or Offerors and in advance of their submissions ensures a clear basis for the Contracting Officer's determination that the benefits of the procurement warrant its cost. An ICE prepared when a project is first undertaken can alert all involved that the project had grown beyond the scope originally intended. An ICE also can provide essential information for procurement planning and for determining which procurement procedures apply to the project (e.g., if the cost estimate exceeds \$100,000, many additional procurement and Federal requirements are triggered). Further, an ICE can be helpful in analyzing the submitted cost or price. The estimate alone may, if prepared with sufficient detail and reliability, be sufficient to determine whether the submitted cost or price is reasonable, and will at least supplement other data used in the cost or price analysis. [BPPM Ch. 2, para. 2.3.2]) [FTA C 4220.1F, Ch. VI, para. 6]

10.6.3.1 Cost Analysis

The Contracting Officer will perform a cost analysis whenever a price analysis will not provide sufficient information or otherwise be sufficient to determine the reasonableness of the Contract cost. A cost analysis must be performed in the following cases: (i) when the Offeror or Offerors submit elements (e.g., labor hours, overhead, materials, and so forth) of the estimated cost (such as in professional consulting and A&E Contracts); (ii) when price competition is inadequate; and (iii) when only a sole source is available, including Contract modifications and change orders. A cost analysis will not be performed when the reasonableness of the proposed Contract price can be determined based on catalog or market prices of commercial products sold in substantial quantities to the general public or based on prices set by law or regulation.

In performing cost analyses, the Contracting Officer will be guided by the following:

- (1) Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.
- (2) Indirect Cost Rates. For Contracts other than A&E Contracts, if the Contractor does not have an approved government indirect cost rate agreement, the Contract's dollar value will determine how an indirect cost rate is verified as follows:



- (a) Contracts of \$5 Million or Less. Indirect cost rates may be based on the audit recommendations of the Contractor's certified public accountant, on indirect cost information in the Contractor's annual statement to its shareholders, or owners, or on the Contractor's rates that have been accepted by other governmental agencies within the prior six months.
 - (b) Contracts Exceeding \$5 Million. Indirect cost rates must have been verified by the Defense Contract Audit Agency, another Federal cognizant audit agency, or an accounting firm approved by the Federal Government to perform audits for the Federal Government.
- (3) Profit. The Contracting Officer will negotiate profit as a separate element of the cost for each Contract in which there has been no price competition, and in all acquisitions in which a cost analysis is performed. To establish a fair and reasonable profit, the Contracting Officer will consider the complexity of the work to be performed, the risk undertaken by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of the Contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.

A sample Cost Analysis is attached in Appendix C.

[FTA C 4220.1F, Ch. VI, para. 6.a]

10.6.3.2 Price Analysis

When the Contracting Officer determines that competition has been adequate, he or she will perform a price analysis, rather than a cost analysis, to determine the reasonableness of the proposed Contract price. The price analysis for micro-purchases and small purchases may be limited. [FTA C 4220.1F, Ch. VI, para. 6.b]

10.6.3.3 Guidance on Cost and Price Analysis

As recognized by the FTA, a Contracting Officer may have difficulty obtaining the information necessary to conduct a proper cost or price analysis and, in that situation, will need the kind of flexibility that is provided to Federal Contracting officers when performing the cost or price analysis. When this is the case, the Contracting Officer may use the following resources as guidance in preparing the cost or price analysis:

- (1) FTA's "Best Practices Procurement Manual," Chapter 5,
- (2) The National Transit Institute Course, "Cost or Price Analysis and Risk Assessment,"
- (3) Pricing Guide for FTA Grantees, FTA Web Site: http://www.fta.dot.gov/documents/Helpline_Price_Guide.doc,
- (4) FAR Part 31, Contract Cost Principles and Procedures, and
- (5) Defense Contract Audit Agency Audit Manual. See, the DCAA Web site: <http://www.dcaa.mil/>.

(Note: Some provisions of FAR Part 31 and the Defense Contract Audit Agency Audit Manual may be inapplicable to the Airports Authority because they are based on provisions of Federal law that do not apply to the Airports Authority.)



A sample Price Analysis is attached in Appendix C.

[FTA C 4220.1F, Ch. VI, para. 6.c]

10.6.4 Evaluations

General. When evaluating Bids or proposals submitted, the Airports Authority will consider all evaluation factors specified in the Solicitation documents, and will evaluate the Bids or proposals only on those evaluation factors. The Contracting Officer may not modify the evaluation factors after Bids or proposals have been submitted without re-opening the Solicitation.

Options. In awarding the Contract that will include options, the following standards apply:

- (1) Evaluation Required. In general, the Contracting Officer will evaluate Bids or proposals for any option quantities or periods contained in a Solicitation if the Airports Authority may exercise those options after the Contract is awarded.
- (2) Evaluation Not Required. The Contracting Officer need not evaluate Bids or Offers for any option quantities or periods when the Contracting Officer determines that such evaluation would not be in the best interests of the Airports Authority (e.g., when it is reasonably certain that funds will not be available to permit an exercise of the option).

Evaluators. In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts when the Contracting Officer determines their participation would be necessary or helpful. [FTA C 4220.1F, Ch. VI, para. 7]

10.6.5 Contract Award

The following provisions apply to Contract awards.

10.6.5.1 Award to Other Than the Lowest Bidder or Offeror.

The Airports Authority may award a Contract to other than the lowest Bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. The Airports Authority may also award a Contract to other than the Offeror whose proposal has the lowest price or cost when this is stated in the evaluation factors of the Solicitation. In both cases the Contracting Officer will include a statement in the Solicitation document reserving the right to award the Contract to other than the low Bidder or Offeror. [FTA C 4220.1F, Ch. VI, para. 8.a]

10.6.5.2 Award Only to a Responsible Bidder or Offeror

The Contracting Officer will only award a Contract to a "responsible" Contractor possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the Contract. Responsibility is a procurement issue that is determined by the Contracting Officer after receiving Bids or proposals and before making the Contract award. A written determination of responsibility shall be completed, using the form found in Appendix C, and shall be placed in the procurement file. To designate a prospective Contractor "responsible," the Contracting Officer, at a minimum, will determine that the Contractor, in addition to being otherwise qualified and eligible to receive the Contract award under applicable laws and regulations, satisfies the following:



- (1) Integrity and Ethics. Has a satisfactory record of integrity and business ethics;
- (2) Debarment and Suspension. Is neither debarred nor suspended from Federal programs;
- (3) Affirmative Action and DBE. Is in compliance with the Airports Authority's and the FTA's affirmative action and Disadvantaged Business Enterprise requirements;
- (4) Public Policy. Is in compliance with the public policies of the Federal Government;
- (5) Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
- (6) Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations;
- (7) Financial Resources. Has, or can obtain, sufficient financial resources to perform the Contract;
- (8) Production Capability. Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
- (9) Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments; and
- (10) Performance Record. Is able to provide a:
 - (a) Current Performance. Satisfactory current performance record; and
 - (b) Past Performance. Satisfactory past performance record in view of its record of long-time performance or the record of performance of a predecessor entity, including:
 - Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance;
 - Adequate Past Experience. 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 the Solicitation document; and
 - Any Past Deficiencies as Basis for Non-Responsible Determination. A prospective Contractor that is or recently has been seriously deficient in past Contract performance will be presumed to be non-responsible, unless the Contracting Officer determines that the circumstances causing the deficiency were properly beyond the Contractor's control, or that the Contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Also, failure to meet the quality requirements of a Contract is a significant factor to be considered in determining past performance. When determining whether a prospective Contractor is non-responsible based on deficient past Contract performance, the Contracting Officer will consider the number of the Contractor's Contracts involved and the extent of the deficient performance in each Contract.



- Fixed Guideway Projects. Before entering into a full funding Contract for the construction of a fixed guideway project, the Airports Authority will consider the prospective Contractor's past performance, if any, in estimating costs and ridership as reported in the Contractor Performance Assessment Reports.

The preceding conditions are not intended to limit the ability of the Airports Authority to shortlist Offerors under the two-step design-build procurement procedures set forth in Paragraph 10.4.6.5. [FTA C 4220.1F, Ch. VI, para. 8.b]

10.6.5.3 Pre-Negotiation Memorandum

Pre-negotiation Memorandum. The Contracting Officer will prepare some form of pre-negotiation document for all negotiations or discussions with Offerors participating in a competitive proposals procurement. The extent of detail and the content of this memorandum will depend on the magnitude and complexity of the negotiations or discussions. The pre-negotiation memorandum will be prepared with an eye toward achieving the following benefits:

- (1) It will facilitate effective cost and/or price analysis.
- (2) It will enhance negotiations with the Offeror by revealing those areas where the costs or price needs to be questioned and discussed with the Offeror.
- (3) It will document the file with an explanation of the basis for the Contract price, and it will be used to provide a history of the procurement (see Appendix C for sample form).
- (4) It will afford the Contracting Officer a method of management review and approval of the Airports Authority's strategy for the negotiations.

[BPPM, Ch. 5, para. 5.2]

10.6.5.4 Extent and Limits of Contract Award

The selection of a Contractor to perform certain work on a project does not, by itself, constitute a sole source selection of the Contractor's wholly owned affiliates to perform other work in connection with the project. [FTA C 4220.1F, Ch. VI, para. 8.d]

10.7 CONFLICTING PROVISIONS

10.7.1 Introduction

Certain provisions in earlier chapters of this Manual are in conflict with FTA Contracting requirements and, therefore, are inapplicable to the acquisitions and procurements to which this Chapter 10 applies. This section identifies in brackets the sections of the Manual that contain these conflicting provisions and indicates the nature of the conflict. In procuring property and services under Chapter 10, the Airports Authority will not rely on or otherwise utilize these conflicting provisions. To the extent the identified sections contain conflicting provisions, the sections are inapplicable to acquisitions or procurements governed by this chapter.

10.7.2 Full and Open Competition [3.1]

The FTA requirement for Full and Open Competition applies to all procurements. However, smaller procurements, which are less than the Federal simplified acquisition threshold, may be treated as



small purchases using relatively simple and in formal small purchase procedures. Procurements in excess of the Federal simplified acquisition threshold must use formal procurement procedures allowing for Full and Open Competition to the maximum extent possible. [FTA C 4220.1F, Ch. VI, para. 3.b]

10.7.3 Full and Open Competition with Exclusions [3.7]

Each procurement that seeks to limit competition must stand on its own merits. The opportunity to participate in Solicitations should be made available to all responsible firms. However, in certain circumstances, the provisions in this Chapter 10 allow for other than full and open competition and these provisions may be applicable to some of the procurements covered in Chapter 3 [FTA C 4220.1F, Ch. VI, para. 3.i]

10.7.3.1 SLBE – 100% Set Aside [2.4.4]

The SLBE program is an Airports Authority program and its provisions do not apply to FTA funded Solicitations.

10.7.3.2 Airport Security Controlled Distribution RFP [3.7.2]

It is the FTA's position that Full and Open Competition means that all responsible sources are permitted to compete, although the FTA does allow the Airports Authority to prequalify people, firms and property (including for airport security services) if several conditions are met. See Paragraph 10.6.1(3). [FTA C 4220.1F, Ch. VI, para. 1.c]

10.7.4 Government Purchasing Agreements [3.6]

The FTA encourages use of state and local intergovernmental agreements for procurements of property or services. [FTA C 4220.1F, Ch. V, para. 4]

Federal laws restrict buying from Federal Supply Schedules to acquiring information technology (IT) and to purchasing products and services to facilitate recovery from a major disaster. [FTA C 4220.1F, Ch. V, para. 6.b]

When obtaining property or services using government purchasing agreements, the Airports Authority will ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental Contract or in the Airports Authority's purchase documents. When buying from these schedules, the Airports Authority will obtain a Buy America certification before entering into the purchase order. If the product to be purchased is not Buy America compliant, the Airports Authority will obtain a waiver from the FTA before proceeding. [FTA C 4220.1F, Ch. V, paras. 4.b and 5.c]

10.7.5 Other Than Full and Open Competition [3.7]

10.7.5.1 Utility Services and Supply [1.1.1(21)]

In the past many utility services were available only from a single source supplier. However, with deregulation some of these services may be available from multiple suppliers. Electrical distribution may still be controlled by a single source supplier whereas the electricity itself may be available from multiple suppliers. Use of the provisions in this Chapter 10 for other than full and open competition may be applicable to some utility services and supply procurements. [FTA C 4220.1F, Ch. VI, para. 3.i]



10.7.5.2 Airline Tenant Procured Projects [3.7.4]

The FTA requires that when a Recipient uses another entity (government or private) to procure goods or services for the Recipient, FTA procurement requirements, including required clauses, must be passed through to and applied by that procuring entity.

10.7.5.3 Proprietary Equipment/Software [3.7.5.1]

Proprietary equipment and software may be procured using sole source procedures, if the procurement qualifies. See the sole source requirements in Paragraph 10.4.6.9(2). [FTA C 4220.1F, Ch. VI, para. 3.i(1)(b)]

10.7.6 Advertisement of Contracting Opportunities [4.1.5]

The FTA requires that Solicitations over \$100,000 be conducted using formal procurement methods (sealed Bids or competitive proposals). Both of these methods require that the Solicitations be publicly advertised. [FTA C 4220.1F, Ch. III, paras. 3.c(2)(a) and 3.d(2)(a)]

10.7.7 Single Response to a Solicitation [4.2.5]

In order to determine fair and reasonable pricing when a single response is received from a Solicitation, the FTA requires that a cost analysis be performed to determine the reasonableness of the proposed Contract price, unless the reasonableness of the proposed price can be determined based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. [FTA C 4220.1F, Ch. VI, para. 6.a]

10.7.8 Evaluation Criteria – Price Only [3.4]

The FTA expects that Contracts awarded based on price and price-related factors only will be solicited using the sealed Bids procurement method unless discussions will be held with Offerors. [FTA C 4220.1F, Ch.VI, para. 3.c(1)(d)]

10.7.9 Evaluation Criteria – Both Price and Technical [3.4.3]

See Paragraph 10.4.6.5, Two Step Procurement Procedures.

10.7.10 Evaluation Criteria – Technical Only [6.1.1]

For FTA-funded procurements, this section may apply only to Architect-Engineer Services, as defined by the Brooks Act. The grantee must select the best-qualified proposal and cost is not a factor. [FTA 4220.1F, Ch. IV, para. 2.h; see also Paragraph 10.4.6.6]. This method cannot be used for financial, audit, or legislative professional services, as stated in Paragraph 2.2.10.

The FTA expects that Contracts resulting from the competitive proposal procurement method will be awarded to the responsible Offeror whose proposal is most advantageous to the Airports Authority's program with price and other factors considered, and that price will be one or more of the evaluation criteria. [FTA C 4220.1F, Ch. VI, para. 3.d(2)(e)]

10.7.11 Determination of Responsibility [4.5]

Prior to awarding any third party Contract funded by the FTA, the Airports Authority shall first determine that the selected Contractor is capable of successfully performing under the terms and conditions of the proposed Contract. The Airports Authority is required to consider such matters as Contractor integrity, compliance with public policy, record of past performance, and financial



and technical resources, including information reported in FTA's required Contractor Performance Assessment Reports. [FTA C 4220.1F, Ch. IV, para. 2a(1)]

10.7.12 Construction Contracting Approach [6.2]

The FTA, relying on the Common Grant Rule, states a preference for the sealed Bids procurement method when acquiring construction services, unlike the Airports Authority which states a preference for the competitive proposal procurement method. [FTA C 4220.1F, Ch. VI, para. 2.c(1)]

10.7.13 Design-Build Contracts [6.2.1.2]

For FTA-assisted design-build Solicitations, because both design and construction are included in a single procurement, the FTA expects the procurement method appropriate for the services having the greatest cost to be used, even though other necessary services would not typically be procured by that method, and it defines the process to be used in determining the method to be used. (See Paragraph 10.4.6.8.) [FTA C 4220.1F, Ch. VI, para. 3.h(1)]

10.7.14 Limited Competition Proposals [3.7.3]

The FTA requires that Recipients normally provide for Full and Open Competition when soliciting sealed Bids or competitive proposals. However, under certain circumstances, Recipients may conduct procurements with Other Than Full and Open Competition. (See Paragraph 10.4.6.9.) [FTA C 4220.1F, Ch. VI, para. 3.i]

10.7.15 Sole Source Negotiation [3.7.5.2]

The FTA requires that Recipients provide for Full and Open Competition when soliciting sealed Bids or competitive proposals. However, under certain circumstances, Recipients may conduct procurements with other than full and open competition. (See Paragraph 10.4.6.9.) [FTA C 4220.1F, Ch. VI, para. 3.i]

10.7.16 RFQ/Purchase Orders [B.1]

For procurements under the Federal simplified acquisition threshold, see Paragraph 10.4.6.2. [FTA C 4220.1F, Ch. VI, para. 3.b]

For procurements at or above the Federal simplified acquisition threshold, see Paragraph 10.4.6.3. [FTA C 4220.1F, Ch. VI, para. 3.c]

10.7.17 Purchase Order/Blanket Purchase Order [B.1.3]

Blanket Purchase Orders may be used for FTA funded micro-purchases when a determination is made that the purchase price is fair and reasonable and the basis for that determination is documented. Purchases over \$2,000 for construction must comply with Davis-Bacon prevailing wage requirements. [FTA C 4220.1F, Ch VI, para. 3.a]

10.7.18 Contract Types and Procedures [Appendix B]

The Common Grant Rule expressly prohibits the use of the "cost plus a percentage of cost" and "cost plus a percentage of construction cost" Contract types. [FTA C 4220.1F, Ch. VI, para. 2.c(2)(a)]



10.7.19 Cost Plus a Percentage of Cost Contract [B7]

The FTA specifically prohibits the “cost plus percentage of cost” Contract type. [FTA C 4220.1F, Ch. VI, para. 2c(2)(a)]

10.7.20 Fixed-Unit-Price Contracts [B.3.2]

The FTA considers this type of Contract to be an indefinite-delivery-indefinite-quantity Contract (See Paragraph 10.7.23.) The FTA expects Recipients to limit their procurements to the amount of property and services required to meet their reasonably expected needs, and to be able to justify the quantities they procure. Having written statements of anticipated material requirements in the Contract files may prove helpful in providing this justification. [FTA C 4220.1F, Ch. V, para. 7.a(2)]

10.7.21 Purchase of Goods Under Indefinite Delivery Contracts [B9]

The FTA expects that if supplies or services are solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity Contract, the Solicitation and the Contract award will contain both a minimum and maximum quantity that represent the Airports Authority’s reasonably foreseeable needs. [FTA C 4220.1F, Ch. V, para. 7.a(2)]

10.7.22 Litigation Bonds [9.3.1]

Although not specifically addressed in its bonding requirements for construction Contracts, the FTA may construe a litigation bond as “excessive bonding” and restrictive of competition. [FTA C 4220.1F, Ch. IV, para. 2.i(1)(f)]

10.7.23 Options May Extend or Change Performance [5.4.2]

The FTA requirements provide that, if a Contract has one or more options and those options were not evaluated as part of the original Contract award, a Recipient’s exercise of the options after Contract award will result in a sole source award. The requirements further provide that, in order to be evaluated, the options must be priced in the original Contract.

The exercise of an option after a Recipient has negotiated a lower or higher price for the option quantities will also result in a sole source award unless that price can be reasonably determined from the terms of the original Contract, or the price results from Federal actions that can be reliably measured. [FTA C 4220.1F, Ch. V, para. 7.a(1)(c)]

10.7.24 Reopening a Closed Contract [5.13.2]

Contract closeout is addressed in the Common Grant Rule, 49 CFR Part 18.50 and in the Best Practices Procurement Manual. Although the reopening of closed Contracts is not specifically addressed in any applicable law or regulation, the FTA does not recommend that Recipients reopen a closed Contract for which there has been Federal assistance.

10.7.25 Correction of Mistakes Alter Award [5.5]

The FTA has established requirements and restrictions for Contract changes; these provisions affect the correction of mistakes after award. [FTA C 4220.1F, Ch. V, para. 7; and Ch. VII, para. 2]

10.7.26 Payment Considerations [5.6]

The FTA allows Recipients to use FTA assistance to support progress payments, provided Recipients obtain adequate security for those payments and have sufficient written documentation to



substantiate the work for which payments are requested. (Examples of such security are provided in Paragraph 10.5.2.5(3).) [FTA C 4220.1F, Ch. IV, para. 2.b(5)(c)]

10.7.27 Prepayments [5.6.1]

The FTA term for “prepayments” is “advance payments.” Requirements applicable to the making of such payments are set out in Paragraph 10.5.2.5(2). [FTA C 4220.1F, Ch. IV, para. 2.b(5)(b)]

10.7.28 Subcontractors Non-Payment [5.7]

While there is no privity of Contract between the Recipients and any subcontractor, Federal regulations (see 49 CFR Part 26.29, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs) contain the following requirements relating to the payment and non-payment of subcontractors:

- (1) “You must establish, as part of your DBE program, a Contract clause to require prime Contractors to pay subcontractors for satisfactory performance of their Contracts no later than 30 Days from receipt of each payment you make to the prime Contractor.”
- (2) “You must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 Days after the subcontractor’s work is satisfactorily completed. You must use one of the following methods to comply with this requirement:
 - (a) “You may decline to hold retainage from prime Contractors and prohibit prime Contractors from holding retainage from subcontractors.”
 - (b) “You may decline to hold retainage from prime Contractors and require a Contract clause obligating prime Contractors to make prompt and full payment of any retainage kept by the prime Contractor to the subcontractor within 30 Days after the subcontractor’s work is satisfactorily completed.”
 - (c) “You may hold retainage from prime Contractors and provide for prompt and regular incremental acceptances of portions of the prime Contract, pay retainage to prime Contractors based on these acceptances, and require a Contract clause obligating the prime Contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 Days after your payment to the prime Contractor.”

These requirements apply to all Contractors and subcontractors, both DBE and non-DBE.

10.7.29 Termination for Default [5.11]

The FTA requires that all Contracts exceeding \$10,000 contain both a termination for cause and a termination for convenience provision. [FTA C 4220.1F, Ch. IV, para. 2.b(6)(b)4]

10.7.30 Concessions Contracts [Chapter 6]

For the avoidance of doubt, the Airports Authority concessions Contracts described in Chapter 6 are not deemed to be “Revenue Contracts” under this Chapter 10. [FTA C 4220.1F, Ch. II, para. 2.b(4)]



10.7.31 Protests [Chapter 9]

The FTA has developed an appeals process for reviewing the Airports Authority's decision in procurement protests.

Only an "interested party" qualifies for FTA review of its appeal.

The protester must exhaust its administrative remedies by pursuing the protest procedures in Chapter 9 of this Manual before appealing a protest decision to the FTA.

The protester must deliver its appeal, in writing, to the FTA Regional Administrator within five (5) working days of the date on when the protester has received actual or constructive notice of the final decision in its protest or has identified other grounds for appeal, such as the Airports Authority's failure to comply with its protest procedures or its refusal to review the protest.

The FTA will limit its review of protest appeals to:

- (1) Whether the Airports Authority has failed to comply with its protest procedures or its refusal to review the protest.
- (2) At the discretion of the FTA, whether the Airports Authority, in the course of the procurement, has violated a Federal law or regulation.

The FTA requires Recipients to notify it when they receive a protest in a procurement financed with Federal assistance and to keep the FTA informed about the status of the protest. [FTA C 4220.1F, Ch. VII, para. 1.a(2)(a)]

10.7.32 Disputes [Chapter 7]

The FTA requires Recipients to notify it of their Contract disputes and to keep it informed about the status of the disputes. [FTA C 4220.1F, Ch. VII, para. 3.a(1)]

10.7.33 FTA Contract Prohibitions

The FTA prohibits a number of Solicitation features, as provided below (see also Paragraph 10.6.2.1(4)). To the extent such features are permitted by other provisions of this Manual, those other provisions are inapplicable to procurements that are subject to Chapter 10. [FTA C 4220.1F, Ch. VI, para. 2.a(4)]

10.7.33.1 Excessive Qualifications

See Paragraph 10.6.2.1(4)(a). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(a)]

10.7.33.2 Unnecessary Experience

See Paragraph 10.6.2.1(4)(b). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(b)]

10.7.33.3 Improper Qualification

See Paragraph 10.6.2.1(4)(c). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(c)]

10.7.33.4 Retainer Contracts

See Paragraph 10.6.2.1(4)(d). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(d)]

10.7.33.5 Excessive Bonding

See Paragraph 10.6.2.1(4)(e). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(e)]



10.7.33.6 Brand Name Only

See Paragraph 10.6.2.1(4)(f). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(f)]

10.7.33.7 In-State or Geographical Restrictions

See Paragraph 10.6.2.1(4)(g). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(g)]

10.7.33.8 Organizational Conflict of Interest

See Paragraph 10.6.2.1(4)(h). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(h)]

10.7.33.9 Restraint of Trade

See Paragraph 10.6.2.1(4)(i). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(i)]

10.7.33.10 Arbitrary Action

See Paragraph 10.6.2.1(4)(j). [FTA C 4220.1F, Ch. VI, para. 2.a(4)(j)]



APPENDIX A: DEFINITIONS

Abstract of Offers – A summary of Bids prepared by Contracting Officer that includes verification of Bid bond receipt and acknowledgment of receipt of amendments, as applicable.

Airport Improvement Program (AIP) – A Federal Aviation Administration program established pursuant to 49 U.S.C. 47101 et seq. which provides federal grant funding for selected airport improvements.

Airport Concessions Disadvantaged Business Enterprise (ACDBE) – Federal Aviation Administration airport concessions DBE program mandated by 49 U.S.C. 47107(e).

Airports – Ronald Reagan Washington National Airport and Washington Dulles International Airport.

Airports Authority (Authority) – Metropolitan Washington Airports Authority.

Architectural/Engineering (A/E) – Firms providing design and consultant services subject to special source selection procedures in Chapter 6.

Best and Final Offer (BAFO) – An opportunity extended to Offerors within the competitive range of a procurement to submit a revised Offer when the Contracting Officer elects to request.

Bid – An Offer of specific goods or services at a specified price, for a specified period of time; generally relates to competitively Bid Contracts which are awarded based on price. A Bid is a binding Offer to perform.

Bidder – Person or firm that submits a Bid in response to an Invitation for Bids (IFB). Note, the term “Offeror,” when used without the term “Bidder” and when the context warrants, includes both those submitting responses to IFBs and to RFPs.

Board – Metropolitan Washington Airports Authority's Board of Directors

Blanket Purchase Agreement (BPA) / Blanket Purchase Order (BPO) – An order between the Airports Authority and an external source that allows the Authority to order future goods or services on a repetitive basis, and to be billed for the goods or services received on an as-ordered basis.

Chief Executive Officer (CEO) – Metropolitan Washington Airports Authority's President and Chief Executive Officer.

Chief Operating Officer (COO) – Metropolitan Washington Airports Authority's Chief Operating Officer. If there is no such position, the CEO shall designate an Authority employee to carry out the specified duties of the COO in this Manual.

Chief Revenue Officer (CRO) – Metropolitan Washington Airports Authority's Chief Revenue Officer. If there is no such position, the CEO shall designate an Authority employee to carry out the specified duties of the CRO in this Manual.



Codes of Ethics – The then-current version of the Airport Authority's *Code of Ethics for Employees* and *Code of Ethics for Members of the Board of Directors*.

Contract – The mutually binding legal relationship created by the parties' agreement after receiving Offers, Bids, or Proposals in response to an Authority Solicitation.

Contracting Activities – Airports Authority's actions related to the Solicitation and award of Contracts for goods or services, including concessions and construction and construction related activities.

Contracting Officer (CO) – An employee to whom the CEO has formally delegated Contracting authority and an employee to whom an employee possessing Contracting authority delegated by the CEO has in writing re-delegated all or a part of that Contracting authority; such Contracting authority includes the authority to obligate the Airports Authority by executing on behalf of the Authority Contracts and other contractual instruments such as Contract modifications, Task Orders, delivery orders, Purchase Orders, and Blanket Purchase Agreements.

Contracting Officer's Technical Representative (COTR) – An individual possessing technical expertise with respect to the contractual work being performed who has been delegated the responsibility for monitoring Contractor performance and supporting the Contracting Officer.

Contractor – An individual or company that has a Contract with the Airports Authority to provide goods, construction, or services, including concessions services. Has the same meaning as supplier and vendor.

Day – Refers to calendar day unless otherwise stated. When a due date for any submission or action required to be performed falls on a federal holiday, Saturday or Sunday, then the same shall not be required to be submitted or performed until the next business day thereafter.

Debarment – An exclusion from Contracting and subcontracting with the Airports Authority for a specified period of time.

Disadvantaged Business Enterprise (DBE) – A firm certified in accordance with the U.S. Department of Transportation regulations at 49 CFR Part 26.

EC Chair – Evaluation Committee member designated by the Contracting Officer to lead the Evaluation Committee in accordance with the authority and responsibilities set forth in this Manual.

Evaluation Committee (EC) – Committee established when required to evaluate technical evaluation criteria.

Freedom of Information Policy – The then-current version of the Airport Authority's Freedom of Information Policy.

Independent Cost Estimate – An estimate of the costs for the goods or services developed by the business unit that is requesting a procurement action and that is made part of the initial procurement package provided to the Contracting Officer.

Invitation for Bids (IFB) – The Solicitation document used to solicit advertised sealed Bids.



Manual – Metropolitan Washington Airports Authority's Contracting Manual, Fifth Edition.

Micro-purchase – A purchase of goods or services for which the Solicitation of competitive quotations is not required.

Offer – A response to a Solicitation that, if accepted, would bind the Offeror to perform the resultant Contract.

Offeror – A person or firm that submits an Offer in response to a Solicitation.

Planholders List – List developed by the Airports Authority that includes firms that have been provided a particular Solicitation and firms who have registered as having downloaded the Solicitation.

Prime Contractor – In connection with Contracts that involve sub-Contractors, prime Contractor refers to the Contractor that holds the Contract and has the contractual relationship with the Airports Authority.

Purchase Order (PO) – An Airports Authority contractual instrument with specified terms and conditions to purchase goods and services issued to the supplier or vendor upon receipt of quotations of price and delivery schedule.

Ratification – The act of a Contracting Officer or other Authority employee approving an unauthorized commitment.

Request for Waiver – Request for relief from complying with all or any part of a DBE goal or SLBE requirement.

Requisition – A funding and authorization document used to request an acquisition.

Request for Proposals (RFP) – A Solicitation document used in negotiated procurements seeking proposals that conform with the Solicitation from responsible Offerors.

Request for Quotations (RFQ) – A document or other inquiry soliciting price and/or delivery information for goods and services used in connection with Simplified Acquisition Procedures pursuant to Chapter 3.

Simplified Acquisition Procedures – A set of streamlined procedures for procurement that reduce the administrative burden of awarding procurements below a threshold value.

Small Local Business Enterprise (SLBE) – A small business concern that is organized for profit and is located within a 100-mile radius of the District of Columbia's zero-mile marker and complies with the definition of "small business" at Section 2.4.2.

Solicitation – any request to submit Offers or quotations to the Authority.

Source Selection Team – Airports Authority officials designated by Contracting Officer to make source selection in certain large dollar value or otherwise mission critical procurements.



Task Order Contract – An indefinite delivery Contract providing an in-place contractual arrangement with one or many competitively selected Contractors that is or are ready, willing and able to undertake a number of jobs, or individual tasks, of the nature described in the Contract’s statement of work.

Task Order – The means used to define and authorize jobs or tasks to be performed by a Contractor under a Task Order Contract.

Vice President, Office of Supply Chain Management (Vice President, OSCM) – The individual appointed to serve as the Vice President of the Office of Supply Chain Management. Unless otherwise restricted in this Manual, this term includes a subordinate of the Vice President, OSCM who has been specifically delegated in writing the authority to implement a provision or requirement set forth in this Manual.



APPENDIX B: PURCHASE ORDERS & CONTRACT TYPES

B.1 PURCHASE ORDERS

Generally, a simplified acquisition will be formalized by a Purchase Order. Purchase Orders shall incorporate, as applicable, pricing, a statement of work, delivery and acceptance information, and the Airports Authority's then-current version of its standard Contract provisions.

B.1.1 Bilateral Purchase Order

It may be in the Airports Authority's best interests to enter into a bilateral Purchase Order that confirms the key elements and understandings associated with the procurement. In such instances, the Contracting Officer shall prepare a written Purchase Order and obtain the Contractor's signature to evidence its agreement to be bound by the Purchase Order prior to releasing the work.

B.1.2 Not-to-Exceed Purchase Orders

A Contracting Officer shall use a not-to-exceed Purchase Order when it is impractical to obtain firm, fixed pricing in advance. In such instances, the Purchase Order shall (1) not exceed the simplified acquisition threshold applicable to the manner in which the Contractor was solicited; and (2) include a not-to-exceed ceiling.

B.1.3 Blanket Purchase Agreement (BPA)

A BPA may be used as a simplified method of filling anticipated repetitive needs. A Contracting Officer may establish a BPA if:

- (1) There is a wide variety of items in a broad class of goods that are generally purchased, but the quantities, and delivery requirements by item are not known in advance and may vary considerably; or
- (2) There is a need to provide commercial sources of supply for one or more offices in the Airports Authority that do not otherwise have or need direct authority to purchase.

A BPA shall not be used for any commodity, service, or other item for which a requirements type Contract has been issued by the Authority.

To the extent practical, BPAs for items of the same type shall be placed concurrently with more than one Contractor. If multiple BPAs exist for a given commodity, the Contracting Officer shall endeavor to purchase from multiple sources while at the same time seeking the best value for the Authority.

B.2 NEGOTIATED CONTRACTS

In general, Contract pricing arrangements are grouped into the two broad categories of fixed price Contracts and cost-reimbursement Contracts. These two types vary according to (1) the degree of responsibility and risk assumed by the Contractor for the costs of performance; and (2) the amount and nature of the profit incentive offered to the Contractor for achieving or exceeding specified standards or goals.



Negotiated Contracts may use any type or combination of types of pricing arrangement that will promote the Airports Authority's interest except as restricted herein. The cost-plus-a-percentage-of-cost Contract requires approval from the Vice President, OSCM prior to any usage. Its use is prohibited if federal funds are involved.

NOTE: For Solicitations funded by the FTA, see Section 10.7.19 for additional guidance on special requirements and restrictions.

B.3 FIXED PRICE CONTRACTS

B.3.1 Firm Fixed Price Contracts

A firm fixed price Contract provides a price not subject to adjustment. It places full responsibility for all costs and resulting profit or loss on the Contractor.

A firm fixed price Contract is suitable for acquiring commercial products, construction on a complete set of construction documents or other clearly prescribed scope of work, or services on the basis of definite, detailed specifications for which the Contracting Officer can establish fair and reasonable prices at the outset, such as when:

- (1) There is adequate price competition;
- (2) There are reasonable price comparisons with prior purchases of the same or similar goods or services made on a competitive basis or supported by valid cost or pricing data; or
- (3) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the Contractor is willing to accept a firm fixed price representing assumption of the risks involved.

A firm fixed price Contract is not recommended if:

- (1) The Contractor has to place a significant contingency factor in its Contract price to cover fluctuations in labor or material costs;
- (2) Significant risks or uncertainties are inherent in the nature of the work; or
- (3) The Contractor will need to protect itself from its inability to realistically estimate the production costs of new items.

B.3.2 Fixed Unit Price Contracts

A fixed unit price Contract provides a unit price for an individual item with the intent that the Airports Authority is likely to purchase multiples of such items. This type of pricing structure is appropriate for commodities, manufactured materials, labor hours, and, in certain instances, repetitive types of services. The Contractor is paid for quantities of goods delivered or services performed at the contracted unit prices.

Solicitation documents for Contracts based on fixed unit price structures should include an estimated amount of the quantities to be purchased so both the Authority and the Contractor can evaluate potential economies of scale. Typically, such Contracts should also include a



variation in quantities clause that clearly identifies when, if at all, the Contractor would be entitled to a pricing adjustment to reflect economies of scale.

Fixed unit price Contracts are used when (a) quantities cannot be determined in advance within limitations that would permit a firm fixed price Offer without a substantial contingency, (ii) quantities can change significantly during performance, or (iii) Offerors would have to expend unusual effort in making quantity take-offs.

Any Contract that includes a fixed unit price structure must include an overall not-to-exceed amount.

NOTE: For Solicitations funded by the FTA, see Section 10.7.20 of this Manual for additional guidance on special requirements and restrictions.

B.3.3 Combination Firm Fixed/Fixed Unit Price

A variant of the firm fixed price structure is the combination firm fixed price Contract and a fixed unit price Contract. This type of Contract should be used when it is not possible to determine the quantities required with reasonable accuracy prior to performance. The significant characteristic of this type of Contract is that a firm fixed price is established for identifiable quantities of work and fixed unit prices are established for only that portion of the work for which quantities are unknown or cannot be reasonably forecast. If there are undefined areas of work which need to be included in the Contract, a specific dollar allowance for such work shall be established by the Airports Authority and included in the Contract price schedule.

Any Contract of this type must include a not-to-exceed amount for the fixed unit price portion.

B.4 FIXED PRICE WITH ECONOMIC PRICE ADJUSTMENT

Fixed price with economic price adjustment Contracts provide for an upward or downward revision of the Contract price upon the occurrence of certain contingencies that are specifically defined in the Contract. These contingencies must be beyond the control of the Contractor.

Use of this type of Contract is appropriate when there is a reasonable chance of instability in the market or labor conditions during the period of Contract performance. It may also be appropriate when contingencies that would otherwise be included in the Contract price can be identified and covered separately by a price adjustment provision. Those contingency factors covered by the price adjustment are eliminated from the fixed price.

There are three general types of adjustments:

- (1) *Adjustments Based on Established Prices.* These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items. In general, this should only be used when the price element that is subject to adjustment can be verified from an objective third party source such as regularly published commodity price or an inflation adjuster such as the Consumer Price Index.



- (2) *Adjustments Based on Cost Standards or Indices of Labor or Materials.* These price adjustments are based on increases or decreases in labor or material cost standards or indices that are specifically identified in the Contract.
- (3) *Adjustments Based on Actual Cost of Labor or Materials.* These price adjustments are based on actual increases or decreases in the cost of labor or materials incurred by the Contractor during the Contract period of performance.

B.5 TIME AND MATERIALS (T&M) CONTRACTS

T&M Contracts provide for the procurement of goods and services, on the basis of direct labor hours at fixed hourly rates, and materials at cost, including, when appropriate, a mark-up for materials handling charges. The charge for direct labor at specified fixed hourly rates includes wages, overhead, general and administrative expenses, and profit. The materials handling charge includes only costs clearly excluded from the fixed hourly labor rate and which generally are associated with the amount of materials being purchased. Contracts that include this pricing structure shall include a not-to-exceed amount for each element and for the overall total. The Contractor exceeds the not-to-exceed amounts at its own risk.

Because this pricing structure provides no economic incentive for a Contractor to minimize the number of hours worked on a task, this structure should only be used in limited circumstances and when other pricing structures are not economically reasonable. In general, such circumstances arise when reasons beyond the control of the Contractor make it impractical to estimate the level of effort required.

A variant of this pricing structure used under the same circumstances is the labor-hour Contract, which differs from the T&M Contract in that no materials are supplied by the Contractor. Labor-hour Contracts shall also include a not-to-exceed amount.

B.6 COST-REIMBURSEMENT CONTRACTS

Cost-reimbursement Contracts provide for payment to the Contractor of reasonable, allocable, and allowable costs. Most cost-reimbursement Contracts also provide for the payment of a fee to the Contractor, in addition to costs, which typically represents the contractor's overhead and profit associated with the work. Cost-reimbursement Contracts establish an estimate of total cost for the purpose of obligating funds and establishing a cost ceiling which the Contractor may not exceed (except at the Contractor's own expense) without prior approval.

Cost-reimbursement Contracts are suitable for use when the nature and complexity of the procurement are such that the costs of performance cannot be estimated with the accuracy necessary for a fixed price Contract. Such Contracts are used only after a finding that such method of Contracting is likely to be less costly than other methods or the use of such method will enable the Airports Authority to achieve some other non-monetary goal of significant importance. Since the actual costs of performance are the basis for payment to the Contractor, it is essential that the Contracting Officer verify that the Contractor's cost accounting system is adequate for the determination of reimbursable costs.



B.6.1 Management Contracts

Management Contracts are structured as cost-reimbursement Contracts with a management fee and may also include a bonus or incentive fees. The Airports Authority pays the Contractor for allowable actual costs incurred plus a fee or fees. Management Contracts are suitable for use when the nature and complexity of the procurement are such that the costs of performance cannot be estimated with accuracy.

Since the actual costs of performance are the basis for payment to the Contractor, it is essential that, prior to the issuance of a notice to proceed, the Contracting Officer verify that the Contractor's cost accounting system is adequate for the determination of reimbursable costs. Provision must be made for appropriate oversight by Authority personnel to provide reasonable assurance that efficient and economical methods are being used.

In general, the fee to be paid to the Contractor shall be fixed for each year and shall not be related to or based on the level of reimbursed costs. In order to incentivize Contractor cost control, efficiency, or other qualitative management goals, the Authority may include a bonus or incentive payment provision in the Contract.

B.7 INCENTIVE PAYMENT STRUCTURES

Incentive payment structures may be used in conjunction with certain Contract pricing arrangements and are designed to harness the profit motive to stimulate the Contractor to perform at a lower cost, to produce a better product or service, or to reduce lead time in delivery dates. Incentive payment structures should be designed to impact the Contractor's management decisions throughout the performance of the Contract. Care must be taken to ensure that the incentive is structured so that any Contract incentive provisions are fair from both the Contractor and the Airports Authority's point of view. Incentive fees can be based on formulas (e.g., a shared savings clause in a CMAR or progressive design-build Contract) or other defined factors.

All incentive arrangements must include a clause setting a maximum allowable profit or fee.

- (1) *Cost-Plus-Award-Fee Contract.* A cost-plus-award-fee Contract is a cost-reimbursement Contract that provides for a fee consisting of (a) a base amount fixed at inception of the Contract (which amount may be zero and in which case all of the Contractor's profit is placed at risk); and (b) an award amount that the Contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in the areas of cost, schedule, and technical performance. The Contract shall clearly explain the process by which entitlement to the award fee shall be made, and the Authority shall comply with the process established in the Contract; provided, however, in no event shall the Contractor be allowed to earn an award fee if the Contractor's overall cost, schedule, and technical performance in the aggregate is below satisfactory, as defined in the Contract. The award fee determination shall be final and shall not be subject to appeal or review. All award fee determinations shall be documented in the Contract file, which shall include, at a minimum, a determination that overall cost, schedule and technical performance in the aggregate is or is not at a satisfactory level, as defined in the Contract.



The Contracting Officer shall obtain approval from the Vice President, OSCM prior to using a cost-plus-award-fee Contract.

- (2) *Fixed Price Incentive Contract.* A fixed price incentive Contract (firm target) specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to the Contractor, except for any adjustment under other Contract clauses. When the Contractor completes performance, the parties negotiate the final cost, and the final cost is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final cost exceeds the price ceiling, the Contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this Contract type provides a positive, calculable profit incentive for the Contractor to control costs.

A fixed price incentive Contract may be used when the following factors apply:

- (a) A firm fixed price Contract is not suitable;
 - (b) The nature of the services being procured and other circumstances of the procurement are such that the Contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance;
 - (c) If the Contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the Contractor's management of the work; and
 - (d) Adequate cost or pricing information for establishing a reasonable firm target is reasonably expected to be available at the time of initial Contract negotiations.
- (3) *Cost-Plus-Incentive-Fee Contract.* The cost-plus-incentive-fee Contract is a cost-reimbursement Contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This Contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After Contract performance, the fee payable to the Contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above the target fee when total allowable costs are less than target costs, and decreases in fee below the target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the Contractor to manage the Contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the Contractor is paid total allowable costs, plus the minimum or maximum fee.

B.8 TASK ORDER CONTRACTS

Task Order Contracts allow the Airports Authority to acquire an indefinite quantity, within stated limits, of supplies or services, including construction services, during a fixed period, with deliveries



or performance to be scheduled by placing orders with the Contractor after the Authority's requirements are defined.

Task Order Contracts are appropriate when the Authority reasonably expects a recurring need for a similar set of goods or services and can reasonably expect to realize a benefit from having one or more pre-approved Contractors provide such goods or services. Contracting Officers should consider administrative efficiency and procurement cycle time when determining whether to utilize a Task Order Contract. Task Orders that are issued under Task Order Contracts that were awarded through a competitive negotiation process are considered to be the result of full and open competition.

Each Task Order Contract shall have a scope of work that describes the general nature, size, and duration of tasks that will be awarded. The nature of the work shall be tailored in a way that reflects the commercial practicalities of the relevant industry and which requires the Contractor to perform a commercially useful function. Work beyond the scope of the Task Order Contract must be handled as a new procurement.

B.8.1 Multiple Award Task Order Contracts

Contracting Officers shall consider the following when determining whether multiple award Task Order Contracts are appropriate: (i) the scope and complexity of the requirements; (ii) the expected duration and frequency of Task Orders; (iii) the mix of resources and skills a Contractor must have to successfully perform on each Task Order; and (iv) the ability to maintain competition among the awardees through the Contracts' period of performance.

B.8.2 Single Award Task Order Contracts

Single award Task Order Contracts shall be awarded as follows:

- (1) *Construction Services.* If the projected Task Orders are so integrally related that only a single Contractor can reasonably perform the work; or if the work relates to a single trade or type of work and unit prices that were competitively Bid are included in the Task Order Contract.
- (2) *Goods & Services.* If: (a) only one Contractor is deemed capable of providing performance at the level of quality required because the services are unique or highly specialized; (b) the Contracting Officer determines that the market is such that more favorable terms and conditions, including price, will be obtained if a single award is made; (c) the expected cost of the administration of multiple Task Order Contracts will outweigh the expected benefits of multiple awards; (d) the projected Task Orders are so integrally related that only a single Contractor can reasonably perform the work; or (e) multiple awards would not be in the best interests of the Airports Authority.

B.8.3 Procedures for Issuing Task Orders

The following procedures guide the issuance of Task Orders:

- (1) The COTR shall submit to the Contracting Officer a Requisition with an in-scope checklist, detailed statement of work, and Independent Cost Estimate. The COTR must also provide written justification explaining why it is in the best interests of the Airports Authority to issue a Task Order rather than conducting a new procurement for any task with an estimated



value above \$250,000. The Contracting Officer shall review and approve all documentation prior to requesting a quotation or proposal.

- (2) If the Contract was a single award, the Task Order proposal request shall be sent to the Contractor. If the Contract was made on a multiple award basis and the estimated value of the Task Order exceeds \$250,000 for construction services or exceeds \$10,000 for non-construction goods or services, the Contracting Officer is responsible for ensuring each Contractor is afforded fair opportunity to receive Task Orders.

If the Contract was made on a multiple award basis and the estimated value of the Task Order is \$250,000 or less for construction services or \$10,000 or less for non-construction goods or services, the Contracting Officer may send the Task Order proposal request to a single Contractor. The Task Order proposal request shall identify the factors that will be considered by the Authority in awarding the Task Order, which may include past performance, the potential impact of awarding the Task Order to a Contractor based on its performance of other issued Task Orders, and any minimum guarantees in the Contract.

- (3) The COTR must review and evaluate the Offer or Offers to determine whether the Authority's needs are met, and, in the case of multiple responses, to make a recommendation as to which Contractor shall be awarded the work. The COTR shall provide the Contracting Officer with a memorandum of evaluation, including justification for recommendation, which the Contracting Officer shall review in his or her determination as to whether the Task Order may be issued.

A Task Order may be awarded under a Contract with multiple Contractors without providing an opportunity for all such Contractors to be considered in the following situations:

- (1) The Authority's need is so urgent that providing the opportunity would result in unacceptable delays;
- (2) Only one Contractor is capable of providing the supplies or services at the level of quality required because the supplies or services ordered are unique or highly specialized;
- (3) The Task Order must be issued on a sole source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the Contract, provided all Contractors were given a fair opportunity to be considered for the original order; or
- (4) It is necessary to place a Task Order to satisfy a minimum guarantee.

B.9 PURCHASE OF GOODS / INDEFINITE DELIVERY CONTRACTS

Indefinite delivery type Contracts reserve to the Airports Authority the right to specify at a time subsequent to the execution of the Contract, when and, in some cases, in what amounts and to where, the Contractor is to make deliveries. The principal advantage of this type of Contract is the savings in handling and warehousing costs and the conservation of space. The method of pricing can be firm fixed price, or fixed price with adjustment. When appropriate, minimum and maximum limits on the size of each order can be set.



NOTE: For Solicitations funded by the FTA, see Section 10.7.21 of this Manual for additional guidance on special requirements and restrictions.

B.10 LETTER CONTRACTS

A letter Contract is a binding commitment utilized to authorize work prior to Contract finalization and award. Use of a letter Contract may be appropriate when (1) the Airports Authority requires that work commence immediately and (2) there is not sufficient time to negotiate a final Contract in order to meet the Authority's needs.

A letter Contract should be as complete and definite as possible under the circumstances and shall include a not-to-exceed ceiling price, a date for final price negotiation, and a date for Contract award.

The use of letter Contracts must be justified in writing by the Contracting Officer and be approved by the Vice President, OSCM.

B.11 CONCESSIONS CONTRACTS

B.11.1 Fixed Fee Contracts

Airports Authority concessions Contracts may be structured where the Contractor pays the Authority a fixed fee for the right to operate a concession. Such Contracts are suitable when the Authority determines that the certainty of a set fee is preferable to participation in the revenues generated by the concession or wants to transfer the risk of performance to the Contractor. In evaluating the use of a fixed fee arrangement, the Contracting Officer should ensure that there is: (i) adequate information on the concession operation and revenue history to determine a reasonable range of fees at the outset; (ii) adequate price competition, and (iii) limited performance uncertainty or other risk that would deter Offerors participating in the Solicitation.

B.11.2 Percentage of Revenue Contracts

Airports Authority concessions Contracts may be structured where the Contractor pays the Authority a percentage of revenues derived from concession operations. Such percentage may be applicable to all the revenues generated by the concession or may include varying percentages at different revenue thresholds. Percentage of revenue Contracts are suitable when there is variability in the expected revenues such that Offerors would not respond to a fixed fee arrangement or their price proposals would likely discount such variability to an unacceptable level.

B.11.3 Breakpoint Contracts

Breakpoint Contracts combine components of the fixed fee and percentage of revenue Contracts and allow the Airports Authority to manage risk and enhance revenue potential. In a breakpoint Contract, the Contractor pays a fixed fee for the right to operate the concession but provides the Authority with a percentage of revenue generated above a set revenue level. Alternately, this type of Contract can be structured where the concession fee is the greater of a minimum annual guarantee or a percentage of revenue. Under this arrangement, the Authority



is guaranteed a certain fee for granting the concession, thus reducing some of its risk, but still maintains the ability to participate if revenues exceed expectations.



APPENDIX C: APPLICABILITY OF FTA CONTRACT CLAUSES / MODEL FEDERAL CLAUSES & FORMS

C.1 APPLICABILITY OF FTA CONTRACT CLAUSES

APPLICABILITY OF THIRD PARTY CONTRACT CLAUSES

(excluding micro-purchases, except for construction contracts over \$2,000)

CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	All	All	All	All	All
Civil Rights (EEO, Title VI & ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Suspension and Debarment	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Involves property transported by ocean vessel	Involves property transported by ocean vessel	Involves property transported by ocean vessel
Fly America	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air	Involves foreign transport or travel by air



CLAUSE	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours & Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act				>\$2,000 (including ferry vessels)	
Bonding				>\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings & Additions	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All
Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	Architectural & Engineering	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States



C.2 MODEL FEDERAL CLAUSES

C.2.1 No Federal Government Obligations to Third Parties

Applicability: Applicable to all contracts.

Flow Down: Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

Suggested Language:

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

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

C.2.2 False Statements or Claims, Civil and Criminal Fraud

Applicability: Applicable to all contracts.

Flow Down: These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Suggested Language:

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

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



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

C.2.3 Access to Third Party Contract Records

Applicability: See Appendix C.1.

Flow Down: The FTA does not require the inclusion of these requirements in subcontracts.

The specified language is not mandated by the statutes or regulations referenced, but the language provided paraphrases the statutory or regulatory language:

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the Airports Authority, the FTA Administrator, the Comptroller General or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The following access to records requirements apply to this Contract:

In accordance with 49 CFR 18.36(i), the Contractor agrees to provide the Airports Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor that are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR 633.17 to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 USC 5302(a)1, which is receiving federal financial assistance through the programs described at 49 USC 5307, 5309 or 5311.

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

C.2.4 Changes to Federal Requirements

Applicability: Applicable to all contracts.

Flow Down: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Suggested Language:

The preceding provisions include, in part, certain standard terms and conditions required by the Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successors are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to



perform any act or refuse to comply with any Airports Authority requests that would cause the Airports Authority to be in violation of the FTA terms and conditions.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Airports Authority and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

C.2.5 Termination

Applicability: All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down: The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

Suggested Language:

- a. **Termination for Convenience (General Provision)** The Airports Authority may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Airports Authority. If the Contractor has any property in its possession belonging to the Airports Authority, the Contractor will account for the same, and dispose of it in the manner the Airports Authority directs.
- b. **Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver material in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Airports Authority may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for material delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Airports Authority that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Airports Authority, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
- c. **Opportunity to Cure (General Provision)** The Airports Authority in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in



which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the Airports Authority's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by the Contractor of written notice from the Airports Authority setting forth the nature of said breach or default, the Airports Authority shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the Airports Authority from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

- d. **Waiver of Remedies for any Breach** In the event that the Airports Authority elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by the Airports Authority shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. **Termination for Convenience (Professional or Transit Service Contracts)** The Airports Authority, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Airports Authority shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. **Termination for Default (Material and Service)** If the Contractor fails to deliver material or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Airports Authority may terminate this contract for default. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for material delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Airports Authority.
- g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Airports Authority may terminate this contract for default. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of Airports Authority goods, the Contractor shall, upon direction of the Airports Authority, protect and preserve the goods until surrendered to the Airports Authority or its agent. The Contractor and Airports Authority shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Airports Authority.



- h. Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Airports Authority may terminate this contract for default. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Airports Authority may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Airports Authority resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Airports Authority in completing the work. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:
1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Airports Authority, acts of another Contractor in the performance of a contract with the Airports Authority, epidemics, quarantine restrictions, strikes, freight embargoes; and
 2. the contractor, within ten (10) days from the beginning of any delay, notifies the Airports Authority in writing of the causes of delay. If in the judgment of the Airports Authority, the delay is excusable, the time for completing the work will be extended. The judgment of the Airports Authority shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Airports Authority.
- i. Termination for Convenience or Default (Architect and Engineering)** The Airports Authority may terminate this contract in whole or in part, for the Airports Authority's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Airports Authority shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of the Airports Authority, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the Airports Authority may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Airports Authority. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in



default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Airports Authority

- j. Termination for Convenience or Default (Cost-Type Contracts)** The Airports Authority may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Airports Authority or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Airports Authority, or property supplied to the Contractor by the Airports Authority. If the termination is for default, the Airports Authority may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Airports Authority and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of the Airports Authority, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the Airports Authority determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Airports Authority, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

C.2.6 Civil Rights Requirements

Applicability: The Civil Rights Requirements apply to all contracts.

Flow Down: The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

The following clause was predicated on language contained at 49 CFR Part 19, Appendix A, but FTA has shortened the lengthy text:

The following requirements apply to the underlying Contract:

1. **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 USC § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 USC § 12132, and Federal transit law at 49 USC § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to the underlying Contract:
 - (a) **Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and Federal transit laws at 49 USC § 5332,



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

- (b) **Age:** In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC §§ 623 and Federal transit law at 49 USC § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.
- (c) **Disabilities:** In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 USC § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements the FTA may issue.

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

C.2.7 Disadvantaged Business Enterprises (DBE)

Applicability: Applicable to all contracts.

Flow Down: The requirements of clause subsection b flow down to subcontracts.

Suggested Language:

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*



- b. The Contractor 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 this DOT-assisted contract. 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 Airports Authority deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).
- c. ***{If a separate contract goal has been established, use the following}*** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following prior to award.
1. The names and addresses of DBE firms that will participate in this contract;
 2. A description of the work each DBE will perform;
 3. The dollar amount of the participation of each DBE firm participating;
 4. Written documentation of the bidder/offeror's commitment to use a DBE Subcontractor whose participation it submits to meet the contract goal;
 5. Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
 6. If the contract goal is not met, evidence of good faith efforts to do so. Offerors must present the information required above as a matter of responsiveness (*see* 49 CFR 26.53(3)).
- d. The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the Airports Authority. In addition, the Contractor is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed.
- e. The Contractor must promptly notify the Airports Authority whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Airports Authority.

C.2.8 Incorporation of Federal Transit Administration (FTA) Terms

Applicability: Applicable to all contracts.

Flow Down: Unlimited flow down.



Suggested Language:

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Airports Authority requests which would cause the Airports Authority to be in violation of the FTA terms and conditions.

C.2.9 Suspension and Debarment

Applicability: Applicable to all Contracts expected to equal or exceed \$25,000 as well as any Contract or Subcontract (at any level) for Federally required auditing services.

Flow Down: Flows down to any Subcontract level expected to equal or exceed \$25,000.

Suggested Language:

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, in any lower-tier covered transaction it enters into.

By signing and submitting its Bid or Proposal, the Bidder or Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Airports Authority. If it is later determined that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the Airports Authority, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C, while this Bid or Proposal is valid and throughout the period of any Contract that may arise from this Bid or Proposal. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

C.2.10 Buy America

Applicability: Applicable to construction contracts and acquisition of goods or rolling stock valued at more than \$100,000.

Flow Down: Buy America requirements apply to Contractors, who are responsible for ensuring that lower tier Contractors and Subcontractors are in compliance. The \$100,000 threshold applies only to the Contract. Subcontracts under that amount are subject to Buy America.



Mandatory Language:

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the Airports Authority the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

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

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

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

Date _____

Signature _____

Company Name _____

Title _____

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

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

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.



Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

C.2.11 Resolution of Disputes, Breaches and Other Litigation

Applicability: Applicable to contracts exceeding \$100,000.

Flow Down: The Breaches and Dispute Resolutions requirements flow down to all tiers.

The FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts:

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Airports Authority's Contracting Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Contracting Officer shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Airports Authority, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Airports Authority and the Contractor arising out of or relating to



this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Airports Authority, Airports Authority representative, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

C.2.12 Lobbying

Applicability: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Services/Operational Services/Turnkey contracts.

Flow Down: Unlimited flow down.

Mandatory Language:

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Airports Authority.

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

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

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



- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96)].
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, Subgrants, and Contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

C.2.13 Clean Air

Applicability: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down: The Clean Air requirements flow down to all Subcontracts which exceed \$100,000.

Suggested Language:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* The Contractor agrees to report each violation to the Airports Authority and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

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



C.2.14 Clean Water

Applicability: The Clean Water requirements apply to each Contract and Subcontract which exceeds \$100,000.

Flow Down: The Clean Water requirements flow down to FTA Recipients and Subrecipients at every tier.

Suggested Language:

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

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

C.2.15 Cargo Preference

Applicability: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down: The Cargo Preference requirements apply to all subcontracts when they may be involved with the transport of equipment, material, or commodities by ocean vessel.

Suggested Language:

The Contractor agrees to the following:

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

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

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

C.2.16 Fly America

Applicability: The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S.,



when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down: First tier contractors are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

Suggested Language:

The Contractor agrees to comply with 49 USC 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that Recipients and Subrecipients of federal funds and their Contractors are required to use U.S. flag air carriers for U.S. government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all Subcontracts that may involve international air transportation.

C.2.17 Davis-Bacon and Copeland Anti-Kickback Acts

Applicability: The acts apply to any construction contract over \$2,000.

Flow Down: The acts flows down to all subcontracts.

Suggested Language:

(1) **Minimum wages –**

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions



of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry;
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- (B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.



- (C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and its recommendation to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the Contractor does not make payments to a trustee or other third person, he/she may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
 - (v) (A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting



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

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

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

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

(3) **Payrolls and basic records** –

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United



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

- (ii) (A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Airports Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all Subcontractors.
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;



- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
 - (iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) **Apprentices and trainees –**
 - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is



performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for other than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.



- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (5) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower- tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.
- (7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor, as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the Airports Authority, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of eligibility** –
 - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be Subcontracted to any person or firm ineligible for award of a Government Contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

C.2.18 Contract Work Hours and Safety Standards Act

Applicability: Applies to contracts exceeding \$100,000.

Flow Down: Provisions of the act flow down to Subcontracts.



Suggested Language:

- (1) **Overtime requirements** - No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) **Withholding for unpaid wages and liquidated damages** – The Airports Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Contract or any other Federal contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) **Subcontracts** - The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

C.2.19 Bonding

Applicability: For those construction or facility improvement contracts or subcontracts exceeding \$100,000, the FTA may accept the bonding policy and requirements of the Airports Authority, provided that they meet the minimum requirements for construction contracts as follows:

- (a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" 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) A performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- (c) A payment bond on the part of the Contractor for 100 percent of the contract price. A "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. Payment bond amounts required from Contractors are as follows:
 - (1) 50% of the Contract price if the Contract price is not more than \$1 million;
 - (2) 40% of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
 - (3) \$2.5 million if the Contract price is more than \$5 million.
- (d) A cash deposit, certified check or other negotiable instrument may be accepted by a Recipient in lieu of performance and payment bonds, provided the Recipient has established a procedure to assure that the interest of the FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Suggested Language:

Bid Bond Requirements (Construction)

(a) Bid Security

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

(b) Rights Reserved

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

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



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

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

Performance and Payment Bonding Requirements (Construction)

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

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Airports Authority determines that a lesser amount would be adequate for its protection..
2. The Airports Authority may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. The Airports Authority may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the Contract price if the Contract price is not more than \$1 million.
 - (ii) Forty percent of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the Contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the Airports Authority may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

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



1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Airports Authority determines that a lesser amount would be adequate for its protection..
2. The Airports Authority may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Airports Authority may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

A payment bond is required only when a performance bond is required, and if the use of a payment bond is in the Airports Authority interest. When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the Contract price if the Contract price is not more than \$1 million;
 - (ii) Forty percent of the Contract price if the Contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the Contract price is increased.

Advance Payment Bonding Requirements

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

Patent Infringement Bonding Requirements (Patent Indemnity)

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

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to the Airports Authority, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by the Airports Authority, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment



by the Airports Authority and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the Airports Authority. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the Airports Authority written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

C.2.20 Seismic Safety

Applicability: The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down: The Seismic Safety requirements flow down from first tier Contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all Subcontractors.

Suggested Language:

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

C.2.21 Transit Employee Protective Arrangements

Applicability: Applies to Contracts for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

Flow Down: These provisions are applicable to all contracts and subcontracts at every tier.

Suggested Language:

- (1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:
 - (a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA



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

- (b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the Contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body Subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to the FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying Contract in compliance with the conditions stated in that U.S. DOL letter.
 - (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the Contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- (2) The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

C.2.22 Charter Service Operations

Applicability: Applicable to Operational Service Contracts.

Flow Down: Applicable to first tier Contractors.

Suggested Language:

The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that the Airports Authority is prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided



under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

C.2.23 School Bus Operations

Applicability: Applicable to Operational Service Contracts.

Flow Down: Applicable to first tier Contractors.

Suggested Language:

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

C.2.24 Drug Use and Testing and Alcohol Misuse and Testing

Applicability: Applicable to Operational Service Contracts.

Flow Down: Anyone who performs a safety-sensitive function for the Airports Authority is required to comply with 49 CFR 655, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance Subcontractors.

Suggested Language:

- (a) Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Virginia, or Owner, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. Contractor agrees further to certify its compliance with Part 655 annually before March 15 and to submit the Management Information System (MIS) reports annually before March 15 to Owner. To certify compliance Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
- (b) To the extent applicable, Contractor agrees to comply with the following Federal substance abuse regulations:
 - (1) Drug-Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*
 - (2) Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.



C.2.25 Patent Rights and Rights in Data and Copyright Requirements

Applicability: Only applicable to research projects financed by an FTA grant the purpose of which is to finance the development of a product or information.

Flow Down: Applicable to all Contractors and their Contracts at every Tier.

Suggested Language:

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK

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

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

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

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

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

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



2. Any rights of copyright purchased by the Airports Authority or Contractor using Federal assistance in whole or in part provided by FTA.
- (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is the FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless the FTA determines otherwise, the Airports Authority and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this provision is added agrees to permit the FTA to make available to the public, either the FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Airports Authority or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by the FTA for transportation capital projects.
 - (d) Unless prohibited by state law, upon request by the Federal Government, the Airports Authority and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Airports Authority or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. Neither the Airports Authority nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the Airports Authority or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this provision has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided



that the Airports Authority or Contractor identifies that data in writing at the time of delivery of the contract work.

- (g) Unless the FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the FTA.
 - (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Airports Authority and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- B. **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:
- (1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this provision has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Airports Authority and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the FTA is ultimately notified.
 - (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Airports Authority and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
 - (3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.



C.2.26 Energy Conservation

Applicability: Applicable to all Contracts.

Flow Down: The Energy Conservation requirements extend to all Third Party Contractors and their Contracts at every tier.

Suggested Language:

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

C.2.27 Recycled Products

Applicability: Applicable to all contracts for items designated by the EPA when the Recipient or Contractor procures \$10,000 or more of one of these items during the fiscal year or has procured \$10,000 or more of such items in the previous fiscal year,

Flow Down: These requirements flow down to all to all Contractor and Subcontractor tiers.

Suggested Language:

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

C.2.28 Conformance with ITS National Architecture

Applicability: Applicable to Contracts and solicitations for ITS projects.

Flow Down: Flow down is to all tiers.

Suggested Language:

The Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

C.2.29 ADA Access

Applicability: Applicable to Contracts for rolling stock or facilities construction/renovation.

Flow Down: The requirements flow down to all tiers.

Suggested Language:

The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly



individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent the FTA approves otherwise in writing.



C.3 FORMS FOR USE IN FTA FUNDED CONTRACTS

C.3.1 Time and Materials Report

TIME AND MATERIALS REPORT

Project: _____
Contract No.: _____

Date: _____
Weather: _____

Prime: Sub:

Date of Work: _____

Work Item and Description: _____

LABOR

Classification	No.	Charge Code	Hours Worked	Line Total

EQUIPMENT

Classification	No.	Charge Code	Hours Worked	SB	Line Total

MATERIALS

Description	Quantity	Unit

SALVAGE

Description	Quantity	Unit

Location and Description of Work:

Prepared by: _____

Reviewed by: _____



C.3.2 Independent Cost Estimate

INDEPENDENT COST ESTIMATE
PROJECT TITLE: _____
DATE: _____
PREPARED BY: _____

SHEET __ OF __
CONTRACT NO.: _____
RFP/PO/RFC/CO: _____

ATTENTION:
THE KEY TO THE PREPARATION OF AN INDEPENDENT COST ESTIMATE IS UNDERSTANDING THE SCOPE OF THE WORK AND DETERMINING THE METHOD OF PREPARING THE ESTIMATE. ESTIMATES MAY BE PREPARED USING MANY FORMS OF CURRENTLY AVAILABLE INFORMATION.

BASIS OF THE ESTIMATE:

The estimate is priced to support a new procurement / a change order / a request for change / etc.

The scope of services is to Manufacture / Furnish / Design / Construct / Study / etc.

The basis of the Contract is a Purchase Order / Professional Services / Design-Build / Design-Bid-Build / etc.

PROFESSIONAL SERVICES:

Professional Services Estimate is based on ...

Estimate includes costs for ...

Estimate excludes costs for

DESCRIPTION OF WORK:

Describe in words the scope of the work. Ex: Provide all plant, labor, equipment, material, supervision tofurnish / design / furnish and install / construct

Estimate includes cost for quality control / testing laboratory / night work / overtime / shipping / training / etc.

Estimate excludes costs for quality control / testing laboratory / night work / overtime

EXCLUSIONS:

Environmental Remediation

Right-of-Way

Program Costs

ETC.

INDEPENDENT COST ESTIMATE

SHEET OF

PROJECT: _____

CONTRACT NO.: _____

DATE: _____

RFP/PO/RFC/CO: _____

CHARGE CODE	DESCRIPTION	QTY	U/M	UNIT COST	AMOUNT	TOTAL
	Professional Services Labor					
	<i>Measured by type and hours</i>	xxx	hrs			
	Scope of Supply					
	<i>Pens / Pencils / Computers Spare parts / ETC.</i>	xxx	ea			
	Construction Work Element					
	<i>ETC. using recognized units of measure and quantities available from review of the scope documents / site visit / or similar description of the work. Include evaluations for Night Work / limited shift / extended shift - resulting in Estimated Premium: Loss in Productivity / Shift Differential / Short Shift</i>	xxx	hrs			
	OR					
	Labor					
	<i>Measured by type and hours</i>	xxx	hrs			
	Material					
	<i>Measured as ea, tons, sq yds, cu yds, etc.</i>	xxx	Var			
	Equipment					
	<i>Measured by type and hours used</i>	xxx	hrs			
	Subcontracts					
	<i>Measured as appropriate: Unit price / etc.</i>					
	OR					
	Labor					
	<i>Measured by type and hours</i>	xxx	hrs			
	Material					
	<i>Measured as ea, tons, sq yds, cu yds, etc.</i>	xxx	Var			
	Equipment					
	<i>Measured by type and hours used</i>	xxx	hrs			
	Subtotal Direct Cost					xxxxxxx
	Other Direct Costs					
	<i>Mobilization / Travel / Consultants / Bonds / Insurance / Tax / etc.</i>					
	Contingency (10 - 30%)					
	Escalation (0 - x% - Mid-point of Scope)					
	Overhead (if not included above)					
	Fee / Profit (if not included above)					
	Total Estimated Cost:					xxxxxxxxx
						Round to: zzzzzzz

NOTES:

- 1) The work has been priced assuming
- 2) All unit costs are fully marked up and contain all Contractor and Subcontractor OH&P.
- 3) See Basis of Estimate for details.

PREPARED: _____

REVIEWED: _____



C.3.3 Cost Analysis

COST ANALYSIS SUMMARY

SHEET __ of __

PROJECT: _____

CONTRACT NO.: _____

DATE: _____

RFP/PO/RFC/CO: _____

<u>CHARGE CODE</u>	<u>DESCRIPTION</u>	<u>ICE</u>	<u>PRENEGOTIATION ESTIMATE</u>	<u>CONT/SUPP1</u>	<u>CONT/SUPP2</u>	<u>CONT/SUPP3</u>	<u>NOTES</u>
	<u>Professional Services Labor</u>						
	<u>Scope of Supply</u>						
	<u>Construction Work Element</u>						
	OR						
	<u>Labor</u>						
	<u>Material</u>						
	<u>Equipment</u>						
	<u>Subcontract Summary</u>						
	<u>Subtotal Direct Cost</u>						
	<u>Other Direct Costs</u>						
	Contingency (10 - 30%)						
	Escalation						
	(0 - x% - Mid-point of Scope)						
	Overhead						
	Fee / Profit						
	(if not included above)						
	TOTAL ESTIMATED COST:						

NOTES:

- 1) The work has been priced assuming
- 2) All unit costs are / are not fully marked up and (do not) contain all Contractor / Subcontractor / Supplier OH&P.
- 3) See Basis of Estimate for details.

PREPARED: _____

REVIEWED: _____

COST ANALYSIS DETAIL

SHEET __ of __

PROJECT: _____

CONTRACT NO.: _____

DATE: _____

RFP/PO/RFC/CO: _____

<u>CHARGE CODE</u>	<u>DESCRIPTION</u>	<u>PRENEGOTIATION ESTIMATE</u>	<u>CONT/SUPP1</u>	<u>CONT/SUPP2</u>	<u>CONT/SUPP3</u>	<u>NOTES</u>
	<u>Professional Services Labor</u> <i>Measured by type and hours</i>					
	<u>Scope of Supply</u> <i>Pens / Pencils / Computers / Spare parts / ETC.</i>					
	<u>Construction Work Element</u> <i>ETC. using recognized units of measure and quantities available from review of the scope documents / site visit / or similar description of the work. Include evaluations for Night Work / limited shift / extended shift - resulting in Estimated Premium: Loss in Productivity / Shift Differential / Short Shift</i>					
	OR					
	<u>Labor</u> <i>Measured by type and hours</i>					
	<u>Material</u> <i>Measured as ea, tons, sq yds, cu yds, etc.</i>					
	<u>Equipment</u> <i>Measured by type and hours used</i>					
	<u>Subcontracts</u> <i>Measured as appropriate: Unit price / etc.</i>					
	OR					
	<u>Labor</u> <i>Measured by type and hours</i>					
	<u>Material</u> <i>Measured as ea, tons, sq yds, cu yds, etc.</i>					
	<u>Equipment</u> <i>Measured by type and hours used</i>					
	<u>Subtotal Direct Cost</u>					
	<u>Other Direct Costs</u> <i>Mobilization / Travel / Consultants / Bonds / Insurance / Tax / etc.</i>					
	Contingency (10 - 30%)					
	Escalation (0 - x% - Mid-point of Scope)					
	Overhead (if not included above)					
	Fee / Profit (if not included above)					
	TOTAL ESTIMATED COST:					

PREPARED: _____

REVIEWED: _____



C.3.4 Price Analysis

PRICE ANALYSIS
PROJECT TITLE: _____
DATE: _____
PREPARED BY: _____

SHEET __ OF __
CONTRACT NO.: _____
RFP/PO/RFC/CO: _____

BACKGROUND:

BASIS OF PRICE ANALYSIS: (Choose those applicable)

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

- ___ Comparison with competing suppliers' prices or catalog prices for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)
- ___ Comparison of proposed pricing with in-house estimates for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)
- ___ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).
- ___ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

SUMMARY PRICE ANALYSIS

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

Discussion:

Conclusion:

Attachments:

Prepared: _____ Reviewed: _____ Approved: _____

Instructions for preparing a PRICE ANALYSIS:

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that demonstrates or strongly suggests that the proposed price is fair.
- Determining when multiple data consistently indicate that a proposed price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

The COTR shall collect, examine, estimate or otherwise analyze prices and prepare a table that is self explanatory and appropriately noted as to sources and that supports a conclusion that the proposed/agreed upon price being awarded is a fair and reasonable price to be paid for securing the Work as defined by the procurement documents or existing Contract.



C.3.5 Procurement History

PROCUREMENT HISTORY

SHEET OF

PROJECT TITLE: _____

CONTRACT NO.: _____

DATE: _____

RFP/PO/RFC/CO: _____

PREPARED BY: _____

SOURCE OF FUNDING: _____

ERP NO. _____

REASON FOR THE PROCUREMENT: _____

METHOD OF PROCUREMENT:

Micro Purchase:

Competitive RFP:

Competitive Bid:

Small Purchase:

A&E Services:

Sole Source:

JUSTIFICATION IF NON-COMPETITIVE: _____

CONTRACT TYPE: _____

Rationale for Contract Type: _____

REASON FOR CONTRACTOR SELECTION OR REJECTION:

Lowest responsive, responsible bidder: _____

Evaluation results were: _____

BASIS FOR PRICE: (Attached Memorandum)

Accepted proposed price:

Negotiated Price:

Other:

COST/PRICE ANALYSIS:

The price offered by the supplier was within % of the pre-negotiation cost analysis (or independent cost estimate), and variance between the comparative evaluations is %. Pricing discrepancies between the evaluated prices was attributed to: _____

Other sources/data used to affirm price reasonableness were: _____

SUMMARY OF RESPONSIBILITY AND RESPONSIVENESS CHECKS: _____

DATE OF AWARD: _____

Board Approval Date (if applicable): _____

For Change Orders:

Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.